

12-2-2011

Martin v. Smith Clerk's Record v. 4 Dckt. 36055

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LAW CLERK

IN THE SUPREME COURT OF THE STATE OF IDAHO

GEORGE MARTIN and MARTIN CUSTOM
HOMES, LLC,

Plaintiff-Respondents,

V.

ED SMITH AND CAMAS COUNTY, IDAHO, by
And through the duly elected Board of
Commissioners in their official capacity,
KEN BACKSTROM, BILL DAVIS, and RON
CHAPMAN,

Defendants-Appellants,

SUPREME COURT # 36055-2009

CLERKS RECORD ON APPEAL



VOLUME #4

Appeal from the District Court of the 5th Judicial District
of the State of Idaho, in and for the County of Camas

HONORABLE ROBERT J. ELGEE, DISTRICT JUDGE

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36055

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ISB# 7473

Attorney for Plaintiff

FILED
3-19-09
HR 3:00 P.
ROULE
Baker & Waller

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CAMAS

GEORGE MARTIN,)	
)	
Plaintiff,)	
)	
and	)	Case No. CV-07-24
)	
MARTIN CUSTOM)	
HOMES, L.L.C.,	)	PLAINTIFFS' MOTION FOR ORDER
	)	REISSUING FINDINGS OF FACT,
Plaintiff,	)	CONCLUSIONS OF LAW, AND
v.	)	ORDER FOLLOWING TRIAL
)	
ED SMITH.)	
)	
Defendant,)	
and)	
)	
)	
CAMAS COUNTY, IDAHO,)	
By and through the duly elected	)	ORAL ARGUMENT WAIVED
Board of Commissioners in	)	UNLESS REQUESTED
their official and capacity	)	BY DEFENDANTS
)	
)	
KEN BACKTROM,)	
BILL DAVIS, and)	
RON CHAPMAN,)	
)	
Defendants.)	
)	

COMES NOW Plaintiffs, George Martin and Martin Custom Homes, by George Martin, through counsel, and files this, his Motion for Order Re-issuing Findings of Fact, Conclusions of Law, and Order Following Trial, and in support thereof states as follows,

PROCEDURAL HISTORY

1. On or about May 4, 2007 Plaintiffs filed their Petition seeking damages against Defendant Ed Smith, in Counts I and II, and for Declaratory Judgment, in Count III, against Camas County seeking a declaration that the Camas County Comprehensive Plan adopted as Resolution 96, and the Camas County Zoning Ordinance and Zoning Map adopted as Ordinance numbers 150 and 153 were all and each of them null and void as violative of the substantive and procedural requirements of Idaho's Local Land Use Planning Act.
2. By agreement of counsel all claims for money damages were reserved for a subsequent trial by jury at a later time.
3. Evidentiary hearings on Petitioner's application for Preliminary Injunction, combined with trial on the Declaratory Judgment action, commenced on or about June 27, 2007 and included subsequent hearings on September 25, 2007, February 26, 2008, May 20, 2008 and May 21, 2008, finally concluding with a hearing on August 20, 2008. The Court allowed until September 26, 2008 for post-trial briefing.
4. On or about October 8, 2008 this Court issued its order on Plaintiff's Motion for Leave to File Amended Petition by Adding Two Additional Causes of Action, namely actions for damages under Section 1983 of the Civil Rights Act, which motion had been filed prior to the conclusion of trial.

5. On or about November 5, 2008 Defendant Camas County, and the individual defendant's Backstrom, Davis, and Chapman filed Notice of Removal to Idaho Federal District Court.

6. On December 3, 2008 this Fifth Judicial District Court for the State of Idaho, County of Camas, issued Findings of Fact, Conclusions of Law, and Order Following Trial granting all relief requested by Plaintiffs, adjudging " (1) The amendments to the Comp Plan adopted May 25, 2006 and March 29 2007, as Resolution 96 are null and void. (2) The amendments to the Camas County Zoning Ordinance, adopted April 18, 2007, as Ordinance #153, and the Zoning Designation Map adopted March 29, 2007 as Ordinance #150 are all, and each of them, null and void."

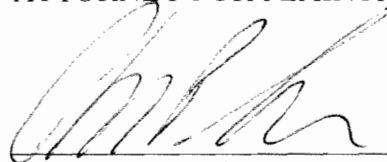
7. Plaintiff filed a Motion to Remand Count III, the Declaratory Judgment action, of Plaintiff's Second Amended Petition with the Federal District Court, which said action had been previously tried by this Court and the subject of its December 3, 2008 Order.

8. The Federal District Court, on March 17, 2009 issued its Order granting Plaintiff's Motion to Remand. (Order of the United States District Court for The District of Idaho attached hereto.)

9. The Federal District Court, among other findings and orders, determined that, on November 5, 2008, it obtained supplemental jurisdiction of the Declaratory Judgment action pursuant to 28 U.S.C. Section 1367 (a) finding that the action was arose "out of the same case or controversy" as the federal civil rights actions, added as Count V and VI, after the trial. Therefore, this Court was divested of jurisdiction prior to issuance of its December 3, 2008 order, but is now, by said March 17, 2009 order, re-vested of jurisdiction over Count III.

WHEREFORE, Petitioner prays this Court to re-issue its Findings of Fact, Conclusions of Law and Order Following Trial, or in the alternative set the matter for a procedural status review.

CHRISTOPHER P. SIMMS
ATTORNEY FOR PLAINTIFF

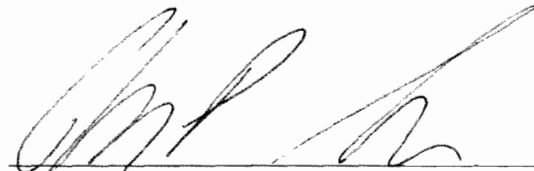


Christopher P. Simms

3-19-09
Dated

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19 day of MARCH 2009, I served a true and correct copy of the foregoing PLAINTIFFS' MOTION FOR ORDER REISSUING FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER FOLLOWING TRIAL by delivering same, to Phillip J. Collaer, Attorney for Defendant Ed Smith, 250 South Fifth Street, Ste. 700, P.O. Box 7426, Boise Idaho 83707-7426, by facsimile number 208 344⁵⁵~~58~~10 and Paul Fitzer, Attorney for Camas County Defendants 950 W. Bannock St., Ste 520, Boise, Idaho 83702, by facsimile number 208 331 1202.



Christopher Simms

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

GEORGE MARTIN and)	
MARTIN CUSTOM HOMES, L.L.C.,	)	Case No. CV 08-470-S-CWD
)	
Plaintiffs,)	
)	
v.	)	ORDER
)	
ED SMITH and CAMAS COUNTY, IDAHO,)	
by and through the duly elected Board of)	
Commissioners in their official capacity,)	
KEN BACKSTROM, BILL DAVIS, and)	
RON CHAPMAN,)	
)	
Defendants.)	
)	

The Court has before it Plaintiff's Motion to Remand (Docket No. 10) and Defendants' Motion to Strike (Docket No. 25). After reviewing the record and considering oral argument on February 20, 2009, the Court finds, as more fully explained below, that Plaintiff's Motion to Remand should be granted and Defendants' Motion to Strike should be denied. As a consequence of granting Plaintiff's Motion to Remand, the Court finds that Defendants' Motion for Summary Judgment of Count III (Injunction) should be dismissed without prejudice. (Docket No. 18.)

**I.
Background**

This action is before this Court by virtue of a Notice of Removal filed on November 5, 2008, by Defendants Camas County, Ed Smith in his capacity as a member of the Camas County

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Planning and Zoning Commission, Ken Backstrom, Bill Davis, and Ron Chapman (the Individual Defendants). (Docket No. 1.) More specifically, the state action removed to this Court originally commenced in May of 2007 in the Fifth Judicial District of the State of Idaho, in and for the County of Camas, involving state law causes of action pursued by Plaintiff George Martin. (Docket No.1)¹ Plaintiff's claims arise out of a real estate transaction in 2004 and 2005 in which Defendant Ed Smith² acted as Plaintiff's broker, as well as Plaintiff's dealings during this same period of time and subsequently with the Camas County Board of Commissioners and its Planning and Zoning Commission, of which Smith was a member.

In an Order on Plaintiff's Motion for Leave to File Amended Complaint dated October 8, 2008, the state court trial judge granted Plaintiff's request with regard to two additional causes of action³ against Defendants. (Docket No. 1, Attach. 2.) Plaintiff's new claims were brought under 42 U.S.C. § 1983, alleging deprivation of Plaintiff's rights to procedural and substantive due process of law and equal protection of the law in violation of the Fourteenth Amendment to the United States Constitution as well as Sections 13 and 2 of the Idaho Constitution. These two

¹ The Notice of Removal, coupled with the state court trial judge's Order on Plaintiff's Motion for Leave to File Amended Complaint attached thereto, indicates that Plaintiff's original complaint involved state law causes of action only.

² Hereinafter "Smith."

³ In the state court trial judge's order, he denied Plaintiff's request to add Count IV to his complaint, which sought a declaratory judgment, or alternatively judicial review, of certain activities of the Board of Commissioners and Planning and Zoning Commission in 2008, after the state lawsuit was commenced. As set out in Defendants' Response (Docket No. 15) to Plaintiff's Motion to Remand (Docket No. 10) and explained during oral argument, Plaintiff later filed a separate action in Camas County, essentially involving the allegations and claim for relief otherwise included in the proposed Count IV. There is no contention that Count IV in the Plaintiff's Second Amended Petition is before this Court.

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causes of action, included as Counts V and VI in the Plaintiff's Second Amended Petition⁴ are the basis of the assertion of this Court's original jurisdiction under 28 U.S.C. § 1331 in the Notice of Removal. (Docket No. 1.) Defendant Smith, in his individual capacity, filed a Consent to Removal on November 13, 2008. (Docket No. 4.) Thereafter, on January 2, 2009, Plaintiff filed an Objection to Removal/Motion to Remand.⁵ (Docket No. 10.)

The subject of Plaintiff's Motion to Remand is Count III of Plaintiff's Second Amended Petition. Count III requests declaratory judgment, or in the alternative, judicial review, of various alleged procedural and substantive violations of Idaho Code § 67-6501, *et. seq.*, Idaho's Local Land Use Planning Act ("LLUPA"), committed by the Board of Commissioners and the Planning and Zoning Commission of Camas County during the time period of Plaintiff's real estate transaction in 2004 and 2005 and thereafter. (Docket No. 10.) Plaintiff maintains that this Court lacks subject matter jurisdiction over Count III, primarily because state law predominates over Count III.

Plaintiff further argues that this Court should decline supplemental jurisdiction over Count III pursuant to the Court's discretionary authority in 28 U.S.C. § 1367(c)(1), (2) and (4), because the state court trial judge already heard and considered all the evidence from Plaintiff and Defendants Camas County on that count.⁶ Additionally, Plaintiff asserts that Count III presents

⁴ The full title of Plaintiff's Second Amended Petition reads: Plaintiff's Second Amended Petition for Breach of Contract, Tortious Interference with Contract, For Declarative Relief, Damages for Violation of Procedural & Substantive Due Process Rights and Equal Protection of Law, hereinafter "Plaintiff's Second Amended Petition." (Docket No. 1, Attach 3.)

⁵ The Court refers herein to the Objection to Removal/Motion to Remand as the Motion to Remand.

⁶ Counts I and II in the Second Amended Petition are asserted against Smith only.

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novel or complex issues of state law, and finally, that exceptional circumstances warrant this Court declining jurisdiction over Count III.

In their Response,⁷ Defendants assert that this Court has supplemental jurisdiction over all the state law causes of action in the Plaintiff's Second Amended Petition, including Count III. (Docket No. 15.) In his Reply,⁸ Plaintiff raises procedural deficiencies to argue that removal was not effectuated by the filing of the Notice of Removal on November 5, 2008. (Docket No. 23.) In rebuttal to Plaintiff's reply, Defendants filed a Motion to Strike Plaintiff's Reply, arguing that Plaintiff is precluded from asserting new evidence or advancing new arguments in his reply memorandum. (Docket No. 25.) More specifically, Defendants argue that the "only factual evidence and legal argument raised in Plaintiff's initial motion pertained to 28 U.S.C. § 1367(c)," while Plaintiff's reply raises new factual assertions and legal argument pertaining to an alleged procedural defect in the Defendants' removal notice. Furthermore, in their Motion to Strike, Defendants contend Plaintiff's motion is untimely under 28 U.S.C. § 1447(c). On February 20, 2009, the Court heard oral argument from the parties on Plaintiff's Motion to Remand and on the related Motion to Strike filed by the Camas County Defendants.⁹

⁷ The full title of Defendants' Response is Response to Plaintiffs' Objection to Removal/Motion for Remand, filed January 26, 2009. (Docket No. 15.)

⁸ The full title of Plaintiff's Reply is Plaintiff's Reply to Defendants' Response to Plaintiffs' Objection to Removal/Motion for Remand, filed February 11, 2009. (Docket No. 23.)

⁹ Defendants Camas County filed three Motions for Summary Judgment, on Count II (Docket No. 17), Count III (Docket No. 18), and Counts V and VI (Docket No. 19). By Stipulation of Counsel (Docket No. 26) and Order of this Court (Docket No. 31), Plaintiff's time to respond to these motions was extended to April 1, 2009. Because the Court is granting Plaintiff's Motion for Remand (Docket No. 10), Defendants' Motion for Summary Judgment (Docket No. 18) on Count III will be dismissed without prejudice.

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II. Discussion

A. Subject Matter Jurisdiction over Count III

Plaintiff asserts that this Court lacks subject matter jurisdiction over Count III, the request for declaratory relief, in Plaintiff's Second Amended Petition, because state law, specifically LLUPA, predominates over Count III. 28 U.S.C. § 1447(c) permits a party to raise lack of subject matter jurisdiction at any time after a lawsuit filed in state court is removed to federal court.¹⁰

Neither the Camas County Defendants in their Notice of Removal (Docket No. 1) nor Smith in his Consent to Removal (Docket No. 4) cite 28 U.S.C. § 1367, the supplemental jurisdiction statute, with regard to removal of Counts I, II and III in the Plaintiff's Second Amended Petition. However, Defendants argue in response to Plaintiff's Motion to Remand that this Court has supplemental jurisdiction over Count I, II and III, in addition to its original jurisdiction over Counts V and VI. The Court agrees.

28 U.S.C. § 1367(a) provides: "... in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy" ¹¹ Counts V and VI, the claims filed under 42 U.S.C. § 1983

¹⁰ 28 U.S.C. § 1447(c) states in pertinent part: "A motion to remand the case on the basis of any defect other than subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a)."

¹¹ In full, 28 U.S.C. § 1367(a) provides: "Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of

and over which this Court has original jurisdiction, arise out of the same case or controversy and involve the same parties as those in Counts I, II and III. Although Smith is the sole subject of the allegations set forth in Counts I and II (breach of contract and tortious interference with contract), he is included among the Defendants named in Counts III, V, and VI. Counts I and II of Plaintiff's Second Amended Petition relate to Smith's role as a broker in Plaintiff's acquisition of real property. Part of Plaintiff's allegation in Count II is that Smith's alleged tortious interference with contract stems from his efforts, while serving on the Planning and Zoning Commission, in preventing the property from being re-zoned satisfactorily to Plaintiff. Similarly, Count III alleges that conflicts of interest existed between Smith's role as a broker in connection with Plaintiff's property acquisition and Smith's role as a member of the Planning and Zoning Commission.

The procedures and actions undertaken by Smith and by the Camas County Defendants while serving on the Board of Commissioners or Planning and Zoning Commission are the subject of Counts III, V and VI. A state law claim is part of the same case or controversy when it shares a "common nucleus of operative facts" with federal claims. *Trs. of the Construction Indus. & Laborers Health & Welfare Trust v. Dessert Valley Landscape Maint., Inc.*, 333 F. 3d 923, 925 (9th Cir. 2003). Because Counts I, II and III share a common nucleus of operative facts that form the same case or controversy as Counts V and VI, over which this Court has original jurisdiction, this Court has supplemental jurisdiction over Counts I, II and III in Plaintiff's Second Amended Petition.

additional parties."

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B. Remand Under 28 U.S.C. § 1367(c)(1), (2), and (4)

Having determined that this Court has subject matter jurisdiction over all counts in Plaintiff's Second Amended Petition,¹² the court must next consider whether it should exercise its discretionary authority to remand Count III to state court under 28 U.S.C. § 1367(c). In making a determination whether to remand, it is pertinent to address the procedural history of Count III, having its origin in protracted and hotly contested state court proceedings prior to removal to this Court.

Count III was the subject of evidentiary hearings on a motion for temporary restraining order, two motions for preliminary injunction, and trial to the state court judge. (Docket No. 1, Attach. 2.) Counts V and VI, the federal causes of action plead under 42 U.S.C. § 1983, were added to the lawsuit after trial on Count III on August 20, 2008. In connection with that trial, the state court trial judge also considered evidence previously presented during the series of hearings that occurred in the fifteen months leading up to trial, addressing the issues of whether Camas County had a duly constituted planning and zoning commission; whether the Board of Commissioners failed to keep a transcribable verbatim record of its proceedings; whether the Camas County Defendants could proceed under the March 2007 amendments to the zoning ordinance; and whether conflicts of interest existed in connection with Smith and Defendant Blackstrom's official duties, because both owned property "which was favorably affected by actions which were taken and approved with [their] participation on the Board of Commissioners." (Docket No. 23, Attach. 1, 2, 3, 4.)

¹² Again, excluding Count IV that was not allowed as an amendment.

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In the Order allowing Plaintiff leave to amend his complaint to add Counts V and VI issued on October 8, 2008, the state court trial judge indicated all the evidence on Count III already had been submitted and the matter would be taken under advisement immediately after post trial briefs were submitted by the parties. (Docket No. 1, Attach. 2, p. 2.) In addition to providing an overview of the procedural history, the state court trial judge also signaled his intent to certify his pending decision on trial of Count III as final under Idaho R. Civ. P. 54(b)¹³ (Docket No. 1, Attach. 2, pp. 7-10). Although Defendants Camas County filed a Notice of Removal on November 5, 2008, the state court trial judge issued Findings of Fact, Conclusions of Law and Order Following Trial on the declaratory judgment action on December 3, 2008. (Docket. No. 23, Attach. 5.)

Plaintiff contends that remand of Count III is proper under 28 U.S.C. § 1367(c), more specifically, under either subsection (c)(1), (2), or (4). (Docket No. 10.) Section 1367(c) provides four circumstances in which the district court may decline supplemental jurisdiction and remand a claim to state court. Those circumstances include:

(1) if the claim raises a novel or complex issue of state law; (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction; (3) the district court has dismissed all claims over which it has original jurisdiction; or (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

28 U.S.C. § 1367(c).

¹³ Idaho R. Civ P. 54(b) in pertinent part states: “. . . when more than one claim for relief is presented in an action . . . the court may direct the entry of a final judgment upon one or more but less than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of the judgment”

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The Ninth Circuit has held “while discretion to decline to exercise supplemental jurisdiction over state law claims is triggered by the presence of one of the conditions in § 1367(c), it is informed by the *Gibbs* values of economy, convenience, fairness and comity.” *Acri v. Varian Associates, Inc.*, 114 F.3d 999, 1001 (9th Cir. 1997) citing *United Mine Workers v. Gibbs*, 383 U.S. 715 (1966). Thus, “when one or more of the § 1367(c) factors are present, the additional *Gibbs* considerations may, by their presence or absence, influence the court in its decision concerning the exercise of such discretion.” *Itar-Tass Russian News Agency v. Itar-Tass Russian News Agency*, 140 F. 3d 442, 447 (2nd Cir. 1998).

Plaintiff first argues that this Court should decline supplemental jurisdiction over Count III under subsection (c)(1) of Section 1367 because it involves novel and complex issues of state law. While the state court trial judge’s Order on Plaintiff’s motion to file an amended petition suggested guidance from the Idaho Supreme Court on LLUPA issues of first impression might support a 54(b) certification of his pending decision on trial of Count III, this Court does not necessarily agree that local land use planning issues are novel and complex. (Docket No. 1, Attach. 2.) However, the Court need not determine whether subsection (c)(1) of Section 1367 supports remand because, as explained below, supplemental jurisdiction over Count III will be declined for other reasons. Similarly, Plaintiff’s assertion that this Court should decline supplemental jurisdiction under § 1367(c)(2) because state law predominates over the two federal claims, needs not to be decided. Instead, this Court agrees with Plaintiff’s third and final argument that compelling reasons for declining jurisdiction over Count III exist in connection with the exceptional circumstances of this case.

28 U.S.C. § 1367(c)(4) permits federal courts, upon finding of “exceptional circumstances,” to decline supplemental jurisdiction. The use of the phrase “exceptional

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circumstances" indicates that "Congress has sounded a note of caution that the bases for declining jurisdiction should be extended beyond the circumstances identified in subsections (c)(1)-(3) only if the circumstances are quite unusual." *Acri*, 114 F. 3d at 448 citing *Executive Software N. Am., Inc. v. United States Dist. Court*, 24 F. 3d 1545, 1558 (9th Cir. 1994).

Plaintiff argues that circumstances in this case are exceptional, primarily because the declaratory judgment action has already been tried, with resources expended by the parties and the state court over fifteen months of proceedings in Camas County. This Court agrees that it is "quite unusual" that Count III was in essence bifurcated from the rest of the action, and tried to and taken under advisement by the Court prior to removal.¹⁴ In addition, the record demonstrates that the parties and the state court trial judge treated Count III as a separate cause of action while the entire case was pending in Camas County. For example, little to no discovery was conducted on Counts I and II, and Smith's attorney for the claims asserted in Counts I and II was excused from trial on Count III. (Docket No. 1, Attach. 2, pp. 2-3.) Further, the state court trial judge intimated he would issue a Rule 54(b)¹⁵ certification on Count III, so the outcome of trial could be appealed to the Idaho Supreme Court prior to disposition of the entire action. The fact that Count III requests declaratory relief whereas the other counts in the Plaintiff's Second Amended Petition request monetary damages against the Defendants was considered significant by the state court

¹⁴ It is more than unusual that the state court trial judge proceeded with issuing his findings of fact and conclusions of law *after* the state court was divested of jurisdiction pursuant to 28 U.S.C. § 1446(d) that states: "Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect the removal **and the State court shall proceed no further unless and until the case is remanded** (emphasis added)." However, this fact is not within the compelling reasons upon which this Court bases its order to remand.

¹⁵ See note 13, *supra*.

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trial judge when discussing the propriety of a Rule 54(b) certification. Likewise, this Court considers this fact to be among the other compelling reasons for remand of Count III.

The Court's determination that exceptional circumstances exist in this case does not end the inquiry as to whether the court should decline supplemental jurisdiction over Count III, however. The *Gibbs* factors of economy, convenience, fairness and comity need to be considered. As explained below, the *Gibbs* factors also support remand.

Perhaps most notable are the factors of economy and convenience. Count III had a protracted history in state court proceedings spanning over fifteen months, including evidentiary hearings on a motion for temporary restraining order, two motions for preliminary injunction, and trial. During oral argument, Plaintiff indicated that the record of the case consists of thousands of pages. Although the parties may have to re-present some of the same evidence they presented during trial on Count III to prove and or defend against Counts I, II, V and VI in Plaintiff's Second Amended Petition, there will be additional and separate factual and legal issues involved.

With respect to the *Gibbs* factor of fairness, Defendants Camas County previously agreed to "bifurcate" Count III for trial. Removal of Count III to federal court to allow Defendants to re-litigate the declaratory judgment action in a new forum could provide Defendants two bites at the apple. Finally, respect toward the proceedings already undertaken by the state court trial judge and consideration of the state court's purview over state law issues, in this instance LLUPA, weigh in favor of declining supplemental jurisdiction under the *Gibbs* factor of comity.

C. Defendants' Removal

In his Reply to defendants' response to the Motion to Remand, filed on February 11, 2009, Plaintiff raised for the first time an argument that removal was not effected because the state court

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did not receive notice that the action was removed.¹⁶ (Docket No. 23.) Plaintiff bases his argument on the lack of an entry in the state court docket (Docket No. 3) reflecting the Notice of Removal. Plaintiff also relies on the fact that the state court trial judge issued Findings of Fact, Conclusions of Law and Order Following Trial on December 3, 2008, nearly two months after Defendants Camas County filed their Notice of Removal with this Court.

28 U.S.C. § 1446(d) states: "Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice to all adverse parties and shall file a copy of the notice with the clerk of such state court, which shall effect the removal" The Notice of Removal filed with this Court on November 5, 2008, includes a Certificate of Mailing signed by Defendant Camas County's Counsel certifying that a copy of the Notice of Removal was forwarded to the parties by method of United States Mail in November of 2008.¹⁷ (Docket No. 1.) Additionally, the court clerk for the Fifth Judicial District in Fairfield, Camas County, Idaho, is listed on the certificate of mailing.¹⁸ Furthermore, in his December 3, 2008 Order, the state court trial judge stated that "defendants removed the remainder of this action to federal court

¹⁶ During oral argument, Plaintiff's counsel stated that he does not dispute that Plaintiff received a copy of the Notice of Removal shortly after it was filed with this Court.

¹⁷ In the Certificate of Mailing, Defendants' counsel failed to insert the exact day in November on which the Notice of Removal was mailed. However, the Notice of Removal, signed by counsel for the Camas County Defendants and filed with this Court on November 5, 2008, includes verification that the Notice was mailed to the clerk of the state court. (Docket No. 1.)

¹⁸ The Notice of Removal sent to the clerk of the state court contained the federal court caption, which may explain why such notice was not filed or otherwise noted in the state court's docket. It is clear from the record, however, that the state court trial judge was aware that the action had been removed.

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... by virtue of a Notice of Removal filed November 10, 2008.”¹⁹ (Docket No. 23, Attach. 5.)

Although the above facts and inferences weigh against the Plaintiff’s arguments regarding procedural deficiencies in the removal of the Plaintiff’s Second Amended Petition to this Court, the Court need not make such a determination. As argued by Defendants in their Motion to Strike, Plaintiff’s Motion to Remand on the basis of alleged procedural deficiencies is untimely. While 28 U.S.C. § 1447(c) permits a party to file a motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction, such a motion must be made within thirty days after the filing of the notice of removal under § 1446(a). Here, Defendants filed their Notice of Removal on November 5, 2008. (Docket No. 1.) The Plaintiff first raised this potential defect in his Reply filed February 11, 2009. (Docket No. 23, Attach. 1.) This aspect of Plaintiff’s Motion to Remand is, therefore, untimely and will not be addressed further by this Court.

D. Defendants’ Motion to Strike

In their Motion to Strike (Docket No. 25), Defendants argue that this Court should not consider Plaintiff’s Reply (Docket No. 23), because it raises new arguments and factual assertions not raised in Plaintiff’s Motion to Remand (Docket No. 10).

Generally, where new evidence is raised in a reply to a motion, the court should not consider it without giving the non-movant an opportunity to respond. *JG; NG; RG; SG v. Douglas County School District*, 552 F. 3d 786, 803 (9th Cir. 2008). However, the court can deny a motion to strike such a reply where the party making it has in the motion itself effectively

¹⁹ The state court trial judge’s December 3, 2008 Order is referenced solely for the purpose of providing the procedural background of the case and the fact that the state court received notice of the removal.

responded to any issues raised it believes to be new. *Shawmut Bank, N.A. v. Kress Associates*, 33 F. 3d 1477, 1493 (9th Cir. 1994).

The Defendants, in their Motion to Strike, responded to the Plaintiff's Reply by addressing the arguments and factual assertions they contend were new or outside the Plaintiff's Motion to Remand. (Docket No. 25.) Further, the Defendants had the opportunity to address and respond to the arguments in Plaintiff's Reply during oral argument on February 20, 2009. (Docket No. 23, Attach.1.) As such, the Court finds that the Defendants were not prejudiced by Plaintiff's Reply and the arguments contained therein. For these reasons and as stated on the record at the conclusion of oral argument, the Court finds that Defendants' Motion to Strike should be denied.

ORDER

Based on the foregoing, the Court being otherwise fully advised in the premises, **IT IS HEREBY ORDERED that:**

- 1) Plaintiff's Motion to Remand (Docket No. 10) is GRANTED and Count III in the Plaintiff's Second Amended Petition is DISMISSED and REMANDED to the Fifth Judicial District of the State of Idaho, in and for the County of Camas, Case No. CV 07-24.
- 2) Defendants' Motion to Strike (Docket No. 25) is DENIED.
- 3) Defendants' Motion for Summary Judgment (Docket No. 18) as to Count III is DISMISSED without prejudice.

IT IS FURTHER ORDERED that:

- 4) Plaintiff is directed to file a notice of receipt of this Order and a copy of this Order with the Fifth Judicial District of the State of Idaho, in and for the County of Camas, in Case No.

Order - 14

Plaintiffs Motion for Order Reissuing Findings -18
pg 619

CV 07-24, within five days, and at the same time file an Affidavit of Counsel with this Court providing a copy of the notice filed in the state court action. _



DATED: March 17, 2009

A handwritten signature in black ink, appearing to read "C. Dale".

Honorable Candy W. Dale
Chief United States Magistrate Judge

Order - 15

Plaintiffs' Motion For Order Reissuing Findings
pg 600

In the Supreme Court of the State of Idaho

FILED
3-24-09

HR 11:00 AM

ROLLIE P. [unclear]

Clerk of the Court
Balder D. Walter

GEORGE MARTIN and MARTIN CUSTOM
HOMES, LLC,

Plaintiffs-Respondents,

v.

ED SMITH and CAMAS COUNTY, IDAHO,
by and through the duly elected Board of
Commissioners in their official capacity, KEN
BACKSTROM, BILL DAVIS, and RON
CHAPMAN,

Defendants-Appellants,

ORDER GRANTING MOTION TO
SUSPEND APPEAL

Supreme Court Docket No. 36055-2009
Camas County District Court No. 2007-24

Ref. No. 09S-75

A MOTION TO SUSPEND APPEAL and AFFIDAVIT OF PAUL FITZER IN SUPPORT OF MOTION TO SUSPEND APPEAL were filed by counsel for Appellants on February 4, 2009, requesting this Court to suspend appellate proceedings until such time as the U.S. District Court for the State of Idaho in CV-1:08-cv-470 renders its decision on whether to remand Count III: Permanent Injunction to the Fifth Judicial District before Judge Elgee. The Court is fully advised; therefore, good cause appearing,

IT HEREBY IS ORDERED that Appellants' MOTION TO SUSPEND APPEAL be, and hereby is, GRANTED and proceedings in this appeal shall be SUSPENDED until the U.S. District Court, District of Idaho, enters a decision on remand in CV-1:08-cv-470.

IT FURTHER IS ORDERED that the COUNSEL FOR APPELLANTS SHALL NOTIFY THIS COURT, IN WRITING, OF THE FEDERAL COURT'S DECISION ON REMAND, at which time the due date for filing the Clerk's Record and Reporter's Transcript with this Court shall be reset.

DATED this 20th day of March 2009.

By Order of the Supreme Court

Stephen W. Kenyon

Stephen W. Kenyon, Clerk

cc: Counsel of Record
District Court Clerk
Court Reporter Susan P. Israel
Court Reporter Maureen Newton
District Judge Robert J. Elgee

ORDER GRANTING MOTION TO SUSPEND APPEAL – Docket No. 36055-2009

pg 601

IDAHO SUPREME COURT



IDAHO COURT OF APPEALS

Clerk of the Courts
(208) 334-2210

P.O. Box 83720
Boise, Idaho 83720-0101

ROLLIE BENNETT, CLERK
Attn: KORRI
CAMAS COUNTY COURTHOUSE
CORNER OF SOLDIER & WILLOW
FAIRFIELD, ID
83327

CLERK'S RECORD/REPORTER'S TRANSCRIPT SUSPENDED

Docket No.
36055-2009

GEORGE MARTIN v. ED
SMITH

Camas County District Court
DC Docket #
2007-24

The CLERK'S RECORD / REPORTER'S TRANSCRIPT is SUSPENDED until
Further notification from this office.

FOR FEDERAL COURT DECISION ON REMAND.

For the Court:
Stephen W. Kenyon
Clerk of the Courts

03/23/2009

Order Granting Motion to Suspend Appeal-2

pg 622

Paul J. Fitzer, ISB No. 5675
 Stephanie J. Bonney, ISB No. 6037
 Carl J. Withroe, ISB No. 7051
 MOORE SMITH BUXTON & TURCKE, CHTD.
 950 W. Bannock St., Suite 520
 Boise, ID 83702
 Tel: 208/331/1800
 Fax: 208/331/1202

FILED
 5-15-09
 HR 4:15 P.M.
 ROLLIE BENNETT
 CLERK OF THE DISTRICT COURT
 Rollie Bennett

Attorneys for Defendants Camas County and the Individual Commissioners

**IN THE DISTRICT COURT FOR THE FIFTH JUDICIAL DISTRICT OF THE STATE
 OF IDAHO, IN AND FOR CAMAS COUNTY**

GEORGE MARTIN and MARTIN CUSTOM
 HOMES, LLC,

Plaintiffs,

v.

SMITH and CAMAS COUNTY, IDAHO, by
 and through the duly elected Board of
 Commissioners in their official capacity,
 KEN BACKSTROM, BILL DAVIS, and RON
 CHAPMAN,

Defendants.

Case No. CV-07-24

RESPONSE TO PLAINTIFF'S MOTION
 FOR ORDER REISSUING FINDINGS
 OF FACT, CONCLUSIONS OF LAW,
 AND ORDER FOLLOWING TRIAL

COMES NOW, Camas County, Idaho (the County), by and through its duly elected board
 of county commissioners, Ken Backstrom, Bill Davis, and Ron Chapman (the Individual
 Commissioners), (collectively, County Defendants), by and through their attorneys of record,

RESPONSE TO PLAINTIFF'S MOTION FOR LEAVE TO AMEND PETITION-- 1

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Moore Smith Buxton & Turcke, Chartered, and hereby submits its Response to Plaintiff's Motion for Order Reissuing Findings of Fact, Conclusions of Law and Order Following Trial.

1. On or about November 5, 2008 Camas County removed this cause of action to the United States District Court.
2. Thereafter, this Court issued its Findings of Fact, Conclusions of Law, and Order on or about December 3rd, 2008.
3. The United States District Court remanded Count III back to this Court on March 17, 2009 finding that this Court was divested of jurisdiction prior to the issuance of its December 3, 2008 order, but was now re-vested of jurisdiction of Count III.
4. Thus, Camas County agrees with the Plaintiff, that the December 3rd, 2008 Order was invalid, and, to date, this Court has not issued a Final Order in this case.
5. On or about May 7, 2009 the District Court for the Fifth Judicial District in case no. CV-2008-40 before the Honorable John K. Butler issued its Memorandum Decision and Order Re: Defendants' Motion for Summary Judgment attached hereto as Exhibit A and incorporated herein as if stated in full.
6. In finding that the Plaintiff did not have standing, the Court in CV-2008-40 addressed whether Plaintiff could maintain an action seeking the injunction of the County's 2008 comprehensive plan, land use map, zoning ordinance, and zoning map enacted on or about May 12, 2008; legislation which this Court in CV-2007-24 took judicial notice of during the contempt proceedings in CV-2007-24 and in addressing Plaintiff's motion for leave to amend its complaint.

7. While judicially taking notice of the 2008 Zoning Map (Ordinance 159), this Court may not have ever specifically reviewed Plaintiff's properties. However, in Judge Butler's decision, the Court recites the parties Stipulation of Facts (See Exhibit B, attached hereto and incorporated herein). In said stipulation the parties agree that Plaintiff's properties located within the platted Homestead Subdivision were zoned AT (Agricultural Transitional) allowing one unit per acre prior to the 2007 amendments, A-5 allowing one unit per five acres after the 2007 amendments, and R-1 allowing one unit per acre after the 2008 amendments.
8. This is important as it directly pertains to this Court's anticipated order in CV-2007-24 in that this property has therefore not been downzoned.
9. In its December 3rd, 2008 order this Court referenced the parties stipulation of facts in concluding that the Plaintiff has standing based upon an apparent downzone of the homestead property from AT to A5. (See Paragraph 6). This is not correct or at least is only a partial analysis.
10. As evidenced by the parties Stipulation of Facts, the Plaintiff does not allege and is, in fact, judicially estopped¹ from asserting that these Homestead properties have been

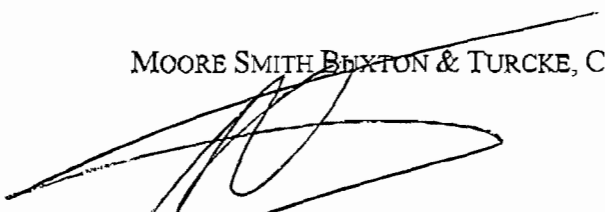
¹ "Where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him. ... This rule, known as judicial estoppel, generally prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase." *Zedner v. U.S.* 547 U.S. 489, 505, 126 S.Ct. 1976, 1988, 164 L.Ed.2d 749, 761 (2006).

downzoned. The Homestead properties were zoned AT prior to any legislative activity and are currently R-1, which both allow one unit per acre.

11. Since this Court has not as yet issued its Order, Plaintiff cannot assert nor can this Court find that the Homestead subdivision is currently zoned A-5 as stated in the December 3rd, Order.
12. This Court may nonetheless still determine that the Plaintiff has standing to bring this cause of action "if his neighbors are allowed to develop adjoining property in a rural area." (See Paragraph 6). As to the zoning designation itself, however, Plaintiff has stipulated and therefore is judicially estopped from asserting that the Homestead properties are currently zoned A-5 resulting in a downzone of his property.

Dated this 13 day of May, 2009.

MOORE SMITH BUXTON & TURCKE, CHARTERED



PAUL FITZER

Moore Smith Buxton & Turcke, Chtd.
950 West Bannock, Ste. 520
Boise, ID 83702

On behalf of Defendants Camas County
and Camas County Board of Commissioners

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Response to Plaintiff's Motion for Order Reissuing Findings of Fact, Conclusions of Law, and Order Following Trial was this 10 day of May, 2009, served upon the following individuals and in the corresponding manner:

Christopher P. Simms
P.O. Box 3123
Ketchum, ID 83340

Via facsimile, 208-622-7129

Phillip J. Collaer
ANDERSON JULIAN & HULL, LLP
P.O. Box 7426
Boise, ID 83707

Via United States mail

Hon. Robert Elgee
Blaine County Courthouse (resident chambers)
202 S. Second Ave. S, Suite 110
Hailey, ID 83333

Via facsimile, 208-788-5512



Paul J. Fitzer

FILED
5-7-09
HR 9:50 A.M.
ROLLIE BENNETT
CLERK OF THE DISTRICT COURT
Rollie Bennett

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CAMAS

GEORGE MARTIN and MARTIN)	
CUSTOM HOMES, LLC,)	
)	
Plaintiff,)	
	)	Case No. CV-2008-40
vs.)	
)	
CAMAS COUNTY, IDAHO, by and)	
through the duly elected Board of)	
Commissioners in their official)	
capacities, KEN BACKSTROM, BILL)	
DAVIS, and RON CHAPMAN,)	
)	
Defendants.)	

MEMORANDUM DECISION AND ORDER
RE: DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

The defendants' Motion for Summary Judgment came on regularly for hearing on Monday, April 13, 2009. Counsel Christopher Simms appeared on behalf of the plaintiff, Martin. Counsel Paul Fitzer appeared on behalf of the Board. After the court heard the arguments of counsel, the court took the matter under advisement to issue a written decision.

1 - MEMORANDUM DECISION AND ORDER RE: DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Response To Plaintiff's Motion - 6

pg 628

EXHIBIT
A

I.**FACTUAL AND PROCEDURAL BACKGROUND****A. Stipulated Facts**

The parties to this proceeding in a prior hearing have stipulated to a set of facts as set forth below and the court adopts the stipulated facts for purposes of the summary judgment motion. The parties in separate stipulations of fact have stipulated as follows:

Stipulation of Facts submitted by Defendants:

1. Plaintiff owns the following parcels of property in Camas County:
 - 1) Property: forty acre parcel at 770 e. 240 N.
 - a. Prior to the 2007 amendments, the property was zoned Agricultural (A) allowing one unit per twenty acres;
 - b. After the amendments, including 2008, the property was zoned Agricultural (A).
 - c. Prior to the 2006 Comprehensive Plan Land Use Map amendments, the property was designated A-T, but A after the amendments.
 - 2) Property: twenty-nine acre parcel west of Soldier road.
 - a. Prior to the 2007 amendments, the property was Agricultural (A);
 - b. After the 2007 amendments, the property was zones Residential (R1), allowing one unit per acre.
 - c. Prior to the 2006 Comprehensive Plan Land Use Map amendments, the property was designated R-7, but R-1 after the amendments.
 - 3) Property: one, one acre lot within the existing, approved, and platted Homestead Subdivision.
 - a. Prior to the 2007 amendments, the properties were zones Agricultural Transitional (AT) allowing one unit per acre;
 - b. Prior to the 2008 amendments, the property was A-5, allowing one unit per five acres.
 - c. After the 2008 amendments, the property was zoned Residential (R1), allowing one unit per acre.
2. The Commission held several public meetings to discuss the new ordinances and resolutions; 9. Notice of Public Hearing before the Planning and Zoning Commission on the draft 2008 Comprehensive Plan, Land Use Map, Zoning Ordinance, and Zoning Map were published in the April 2, April 9, and April 16, 2008 editions to the Camas Courier.
3. Pursuant to Idaho 67-6511(b), notices were posted at:

- a. Camas/Gooding County Line on US 46;
- b. East and West Camas County Lines on US 20;
- c. Camas County Annex;
- d. Entry Road to West Magic Highway 75;
- e. Soldier Road from the North

Notice was not posted at Fairfield City Hall.

4. Notice of the intent to amend the proposed legislation along with copies of the proposed legislation was mailed, on March 14, 2008, to the political subdivisions providing services within the planning jurisdiction, including:

- a. Camas County Weed Management
- b. Camas Soil Conservation District
- c. Camas County Road and Bridge
- d. Idaho Department of Fish and Game
- e. Camas County Sheriff
- f. Camas County School District
- g. Frontier Telephone
- h. Camas County Fire Marshall
- i. Idaho Power
- j. Forsgren Associates, Inc.
- k. South Central Health Department
- l. Camas County Engineer at Galena Engineers.

5. The Commission held public hearings on the 2008 Comprehensive Plan, Land Use Map, Zoning Ordinance, and Zoning Map on April 21, 2008.

6. All members, except one (Celia), of the Planning and Zoning Commission recused themselves on the record and did not vote to recommend approval of said zoning Map.

7. The Commission allowed all interested persons to provide testimony.

8. Plaintiff testified at all public hearings.

9. The public hearing was closed at the conclusion of the April 21 public hearing. The Commission then took up the matter and rendered its recommendation to forward the 2008 Comprehensive Plan, Land Use Map, Zoning Ordinance, and Zoning Map to the Board for consideration and approval.

10. The Commission forwarded its written recommendation to the Board which was received in a Board meeting on April 22, 2008.

11. The members of the Board that owned property in the County recused themselves on the record and did not vote to adopt the proposed zoning map.

12. Notice of Public Hearing before the Camas County Board of County Commissioners on the draft 2008 Comprehensive Plan, Land Use Map, Zoning Ordinance, and Zoning Map were published in the April 23, April 30, and May 7, 2008 editions to the Camas County Courier.

13. On May 12, 2008, the Board conducted public hearings on the proposed legislation taking public and written testimony. Plaintiff testified at all public hearings. The public hearing was closed on May 12, 2008 at the conclusion of testimony. The Board then took up the matter and rendered its decision.

14. By Resolution 114 and 115 the County adopted the Comprehensive Plan and Land Use Map. By Ordinance 157 and 159, the County adopted the Zoning Ordinance and Map.

15. The Planning and Zoning Commission nor the Board of Commissioners generated or conducted new studies in the adoption of the 2008 Comprehensive Plan.

Stipulation of Facts submitted by Plaintiff:

B. The Planning and Zoning Commission nor the Board of Commissioners generated or considered new studies in adoption of the Comprehensive Plans of 2008.

C. Legal Notice of Public Hearing was posted at:

- a. Camas/Gooding County Line on US 46;
- b. East and West Camas County Lines on US 20;
- c. Camas County Annex;
- d. Entry Road to West Magic Highway 75;
- e. Soldier Road from the North

Notice was not posted at Fairfield City Hall.

D. At the Board of County Commissioner level Legal Notice of Public Hearing, pursuant to I.C. 67-6509, was purportedly mailed to all political subdivisions providing services within the planning area. Legal Notice of Public Hearing was not mailed to the City of Fairfield. No written verification of notice exists fro service to the West Magic Fire Protection District.

E. Individual Legal descriptions of the various zoning designations on the 2008 Comprehensive Plan, Land Use Map, Zoning Ordinance, and Zoning Designation Map were not considered in adoption of the same nor published with the Ordinances.

F. Publication of Zoning Ordinance 157 adopted May 12, 2008 did not include any legal descriptions. The publication provided: [t]he full text of Ordinance 157 is available for public inspection during normal office hours at the office of the Camas County Planning and Zoning Administrator.

- G. Publication of the Zoning Designation Map Ordinance No 158 adopted May 12, 2008 did not include any legal descriptions.
- H. Plaintiff owns in fee simple the following parcels of real property in Camas County as of May 12, 2008: (a) 40+ acre parcel 770 E 240 N; (b) 29 acre parcel west of Soldier Road and south of Baseline Road; (c) lots 2 & 4 Blk 5 Homestead Subdivision, within an exiting approved and platted subdivision of one acre lots.
- I. The above parcels of real property, in order, were located within the named zoning district prior to and after the rezone process of 2006, 2007, & 2008: (a) agricultural/agricultural; (b) agricultural/R1; (c) AT/A5.
- J. Plaintiff had a fee simple ownership interest in two (2) 80 acre parcels, in section 4, that were sold to third parties while retaining a contractual fiscal interest in the development, marketing, and building potential thereon. The north parcel was zoned AT before and after the 2006, 2007, & 2008 rezone process. The southern parcel was rezoned from AG to R1 as a result of the 2006, 2007, & 2008 zoning amendment process.
- K. Plaintiff holds a first right of refusal as to a 67 acre parcel in Section 4 that was rezoned from Ag to R1 as a result of the 2006, 2007, & 2008 zoning amendment process.
- L. The parcels generally described in the two preceding paragraphs, numbered I and J, were included in the R-7 land use designation in the Comprehensive Plan Land Use Map existing prior to the 2006 Comprehensive Plan Amendments and R-1 land use designation in the post 2006 Comprehensive Plan Land Use Map amendments.
- M. The 29 acre parcel described in paragraph H subparagraph (b) was included in the R-7 land use designation in the Comprehensive Plan Land Use Map existing prior to the 2006 Comprehensive Plan Amendments and R-1 land use designation in the post 2006 Comprehensive Plan Land Use Map amendments.

B. Summary of Facts

On May 12, 2008 the Board of Commissioners of Camas County (Board) adopted Resolutions 114 and 115 which provided for a new Amended Comprehensive Plan and Land Use Map and subsequent thereto and on the same date the Board adopted Ordinance Nos. 157 and 159 for a new Amended Zoning Ordinance and Zoning Designation Map. As a result of the Board's action approximately 20,000 acres in Camas County was rezoned.

The plaintiff is a resident and property owner in Camas County and owns or has a contractual interest in the following properties:

1. 40+ acre parcel 770 E 240 N (fee simple ownership);
2. 29 acre parcel west of Soldier Road and south of Baseline Road(fee simple ownership);
3. lots 2 & 4 Blk 5 Homestead Subdivision, within an exiting approved and platted subdivision of one acre lots (fee simple ownership);
4. two (2) 80 acre parcels, in Section 4, that plaintiff sold but retains contractual interest in the development and marketing for sale;
5. first right of refusal to purchase a 67 acre parcel in Section 4

The plaintiff filed the complaint for declaratory judgment on October 15, 2008. The complaint seeks to have this court declare as void the adoption of the 2008 amended comprehensive plan and amended zoning ordinance adopted by the Board. The complaint further alleges that the plaintiff is an owner of real property and/or has a contractual interest in real property in Camas County. The complaint summarizes proceedings relative to attempts by the Board to amend and rezone property countywide prior to the adoption of the 2008 comprehensive plan and zoning ordinance and the complaint alleges that certain property of board members or relatives of the board was up-zoned while unspecified property of plaintiff's was down-zoned. In addition, the complaint sets forth allegations of improper and illegal procedures in the adoption of the 2008 land use package. The plaintiff in his affidavit, although not specifically alleged in his complaint, primarily challenges the loss of the R-7 land use designation on the 29-acre parcel of property. Specifically, the 29-acre parcel had a land use map designation of R-7, and after the changes in the 2008 ordinance and comprehensive plan the parcel had a designation of R-1. The 29-acre parcel was located in the named zoning district of agricultural prior to the rezone process initiated in 2006; after the changes in 2006, 2007, and

2008 the parcel was located in a named zoning district of R-1. The defendants filed their motion for summary judgment on February 13, 2009.

II.

STANDARD

Summary judgment is proper "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." IRCP Rule 56(c); *Scona, Inc. v. Green Willow Trust*, 133 Idaho 283, 985 P.2d 1145 (1999). If conflicting inferences are possible, summary judgment should be denied. Only if there is no genuine issue of material fact and the affidavits, pleadings, and depositions have been construed in the light most favorable to the non moving party should summary judgment be awarded. *Loomis v. City of Hailey*, 119 Idaho 434, 807 P.2d 1272 (1991).

If reasonable minds might come to different conclusions, summary judgment is inappropriate. *Carl H. Christensen Family Trust v. Christensen*, 133 Idaho 866, 870, 993 P.2d 1197 (1999). The moving party is entitled to a judgment when the non-moving party "fails to make a showing sufficient to establish the existence of an element essential to that party's case on which that party will bear the burden of proof at trial." *Baxter v. Craney*, 135 Idaho 166, 170, 16 P.3d 263, 267 (2000). The court must liberally construe all disputed facts in favor of the non-moving party, and draw all reasonable inferences and conclusion supported by the record in favor of the party opposing the motion. *Bonz v. Sudweeks*, 119 Idaho 539, 541, 808 P.2d 876, 878 (1999). Further, our courts have repeatedly held that "issues considered on summary judgment are those raised by the pleadings." *VanVooren v. Astin*, 141 Idaho 440, 111 P.3d 125 (2005).

In the context of planning and zoning, "[P]romulgation or enactment of general zoning plans and ordinances is legislative action." *Cooper v. Board of County Commissioners of Ada County*, 101 Idaho 407, 409, 614 P.2d 947, 949 (1980); *Dawson Enterprises, Inc. v. Blaine County*, 98 Idaho 506, 567 P.2d 1257 (1977); *Harrell v. City of Lewiston*, 95 Idaho 243, 506 P.2d 470 (1973); *Cole-Collister Fire Protection District v. City of Boise*, 93 Idaho 558, 468 P.2d 290 (1970); *City of Idaho Falls v. Grimmer*, 63 Idaho 90, 117 P.2d 461 (1941)." *Burt v. City of Idaho Falls*, 125 Idaho 65, 67, 665 P.2d 1075, 1077 (1983). ("Legislative activity by a zoning entity is differentiated from quasi-judicial activity by the result--legislative activity produces a rule or policy which has application to an open class whereas quasi-judicial activity impacts specific individuals, interests or situations."). A legislative act is not subject to judicial review but may be subject to collateral attack in a declaratory judgment action. *Burns Holdings, LLC v. Madison County Board of Commissioners*, 2009 Opinion No. 65 (May 1, 2009); *Scott v. Gooding County*, 137 Idaho 206, 46 P.3d 24 (2002); *McCuskey v. Canyon County*, 123 Idaho 657, 851 P.2d 953 (1993); *Jerome County v. Holloway*, 118 Idaho 681, 799 P.2d 969 (1990); *Burt v. City of Idaho Falls*, 105 Idaho 65, 665 P.2d 1075 (1983); *Cooper v. Board of County Com'rs. Of Ada County*, 101 Idaho 407, 614 P.2d 947 (1980).

III.

ANALYSIS

The plaintiff, George Martin is a resident and landowner in Camas County. He also operates a real estate and land development business in the County. Camas County over the last few years has attempted to amend its comprehensive plan and zoning ordinance on a county wide basis for approximately 20,000 acres. Camas County has a population of less than 1000

residents and overall consists of approximately 678,400 acres. A little over 30 % of the land in the county is under private ownership and the remainder of the land is government owned.

In 2007 the County adopted an amended comprehensive plan and amended zoning ordinance that became the subject of a declaratory and injunctive relief action filed by Mr. Martin. (*Martin v. Camas County-CV-2007-24*). The court in that action enjoined enforcement of the 2007 comprehensive plan and zoning ordinance and subsequently after a court trial determined that the zoning ordinance was void. This action is presently on appeal. This court has been asked to take judicial notice of decisions and orders entered in CV-2007-24. This court declines to take judicial notice of those proceedings, but it would appear to this court that the issue of "standing" was not directly addressed in those prior proceedings.

On May 12, 2008 the County adopted a further amended comprehensive plan and zoning ordinance, which is now the subject of this pending action. In general the plaintiff, Mr. Martin asserts that the 2008 adoption of the comprehensive plan and zoning ordinance is void for essentially the same reasons that the 2007 comprehensive plan and zoning ordinance was void, i.e., conflicts of interest (I.C. § 67-6506); lack of proper notice (I.C. § 67-6509 & 67-6511); lack of a deliberative process and proper findings of fact (I.C. §67-6508; 67-6509; 67-6535).

It is undisputed that the adoption of a valid comprehensive plan is a condition precedent to the validity of any zoning ordinance. *Dawson Enterprises, Inc. v. Blaine County*, 98 Idaho 506, 567 P.2d 1257 (1977); *Sprenger, Grubb & Assoc. v. City of Hailey*, 133 Idaho 320, 986 P.2d 343 (1999).

The Idaho Supreme Court has of recent times made it clear that planning and zoning decisions are only subject to judicial review under the Idaho Administrative Procedures Act (IAPA), if there is a statute authorizing or granting a right to judicial review. *Highlands*

Development Corp. v. City of Boise, 145 Idaho 958, 188 P.3d 900 (2008). The adoption or amendment of a comprehensive plan or zoning ordinance is governed by the provisions of I.C. § 67-6507 – 67-6509 & 67-6511. These statutes do not expressly authorize judicial review of the adoption or amendment of either the comprehensive plan or zoning ordinance. In fact, the court in *Giltner Dairy, LLC v. Jerome County*, 145 Idaho 630, 181 P.3d 1238 (2008) held that an amendment to the comprehensive plan was not subject to judicial review since there was no statute authorizing judicial review. It stands to reason that the adoption or amendment of a zoning ordinance likewise would not be subject to judicial review since I.C. § 67-6511 does not expressly authorize judicial review. *Burns Holding, LLC v. Madison County Board of Commissioners*, 2009 Opinion No. 65 (May 1, 2009). However, an aggrieved landowner may seek relief through an independent action, i.e. declaratory judgment action, under certain circumstances. *Highlands Development Corp., supra.*, 145 Idaho at 962, 188 P.3d at 904.

A. Does Martin have standing?

The first issue to be addressed on summary judgment is whether Martin has standing to challenge the adoption of the 2008 amended comprehensive plan and amended zoning ordinance. The issue of standing must be decided before reaching the merits of the substantive claims. *Young v. City of Ketchum*, 137 Idaho 102, 44 P.3d 1157 (2002). This court will summarize the appellate court decisions that have addressed the issue of declaratory judgment actions relative to planning and zoning matters as well as the issue of standing in such declaratory judgment actions.

1. Case law re: planning & zoning and standing.

In *Miles v. Idaho Power Co.*, 116 Idaho 635, 641, 778 P.2d 757, 763 (1989) the court set forth the three relevant considerations concerning the issue of standing:

(1) "The doctrine of standing focuses on the party seeking relief and not on the issues the party wishes to have adjudicated."

(2) "To satisfy the case or controversy requirement of standing, litigants generally must allege or demonstrate an injury in fact and a substantial likelihood that the judicial relief requested will prevent or redress the claimed injury."

(3) "A citizen and taxpayer may not challenge a governmental enactment where the injury is one suffered by all citizens and taxpayers of the jurisdiction."

In *Jerome County v. Holloway*, 118 Idaho 681, 799 P.2d 969 (1990) the issue presented was the validity of a zoning ordinance amendment which prohibited dairies within one thousand feet of a residence. A dairyman had applied for a special use permit for his proposed dairy. The planning and zoning commission approved the special use permit and an adjoining property owner appealed the granting of the permit to the County Commissioners claiming that the dairy could not comply with the thousand foot setback requirement from their residence. The County Commissioners referred the matter back to the planning and zoning commission which then reissued the permit with the condition that the dairy not be operated or constructed within one thousand feet of a residence. The dairyman then appealed to the County Commissioners, arguing that the ordinance requiring the thousand foot setback was void because it was enacted without the proper notice required by I.C. § 67-6509. The County Board of Commissioners, while the appeal was pending before them, filed a declaratory judgment action to determine the validity of the amended ordinance. The court found that the amended ordinance was void but did not address the issue of standing and it does not appear that the issue was ever raised by the parties or the court.

11 MEMORANDUM DECISION AND ORDER RE: DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Response To Plaintiff's Motion-16

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In *McCuskey v. Canyon County*, 123 Idaho 657, 851 P.2d 953 (1993) a landowner sought to build a gas station and convenience store on land that he owned. The planning and zoning commission issued to the plaintiff a building permit for a Circle K store. A dispute then arose as to the zoning designation of his property and subsequently the planning and zoning commission issued a stop order on the work claiming that the building permit had been issued in error. It was discovered that the county had amended its comprehensive plan and zoning ordinance which result in the plaintiff's property being down zoned from "heavy industrial" to "rural residential." The plaintiff sought to challenge the adoption of the 1975 comprehensive plan and the 1979 zoning ordinance by way of a declaratory judgment action.

The contested issue in *McCuskey* was whether he could maintain a declaratory judgment action since he had "failed to appeal certain adverse zoning decisions made prior to the enactment of the 1979 zoning ordinance." *Id.* 123 Idaho at 661, 851 P.2d at 957. The court only determined that he could maintain his action as filed since he was only "seeking a determination of how his land was zoned" and was not seeking to challenge any "administrative decisions." The court subsequently determined that the amended ordinance was void since the county had not complied with the notice procedures and the plaintiff did not have any actual or constructive notice of the public hearings. Again it does not appear that the court or any of the parties raised the issue of standing of the plaintiff to maintain his action. However, it is clear from the facts presented that the plaintiff had in fact suffered a "peculiarized harm" when the county issued its stop order which prevented the plaintiff from proceeding with the construction of his gas station and store and the fact that his property was down zoned as a result of the enactment of the amended ordinance.

The Court of Appeals in *Student Loan Fund of Idaho, Inc. v. Payette County*, 125 Idaho 824, 875 P.2d 236 (Ct. App. 1994) addressed the issue of "standing" in a declaratory judgment action wherein the plaintiff sought to challenge the validity of an "area of impact" agreement and implementing ordinances between the City of Fruitland and the County of Payette. In regards to the adopted agreement the court noted as follows:

The agreement specifies the zoning for land within the impact area and provides that the county will amend its zoning ordinances to conform to the agreed zoning for the impact area. The agreement calls for the county to adopt a new zoning designation known as "agriculture preservation." Within portions of the impact area to be zoned "agriculture preservation," the agreement provides that "no further development or division of property shall be allowed unless agreed to by both the City and County."

125 Idaho at 825, 875 P.2d at 237.

The court further noted that the county had not passed any ordinances in compliance with the agreement that would have specified the "zoning for the affected land." The record was silent as to how the plaintiff's land was zoned prior to the adoption of the impact area, but did note that a "small portion" of the plaintiff's land according to the agreement was to be zoned commercial and the remaining land would be designated "agricultural preservation zone." The plaintiff argued that it had standing to challenge the County's action because it was an "affected person" since its land fell within the agricultural preservation zone. The court stated as follows:

We note that this is a contemplated future change, not an accomplished rezoning of the property. Although the agreement calls for the county to adopt particular zoning for the area of city impact, as of the date of oral argument in this case, the county had not complied with the agreement by amending its zoning ordinances. Hence, zoning of the Fund's land is as yet unchanged and, absent further action by the county, will remain so. We recognize that standing may be predicated not only upon a past injury but also upon a threatened harm. *Harris, supra; Idaho Branch, Inc. of the Associated Gen. Contractors of America, Inc. v.*

Nampa Highway Dist. No. 1, 123 Idaho 237, 240, 846 P.2d 239, 242 (Ct.App.1993). Therefore, the peril of an imminent rezoning of the Funds' property could be a sufficient predicate for standing if the rezone would inflict some injury.

125 Idaho at 826, 875 P.2d at 238. The court concluded as to this argument that the fund did not have standing because there was no evidence that the contemplated zoning would have altered the permitted uses of the land or the "land's marketability or value."

The Court of Appeals distinguished the holdings in *McCuskey v. Canyon County*, 123 Idaho 657, 851 P.2d 953 (1993) and *Jerome County v. Holloway*, 118 Idaho 681, 799 P.2d 969 (1990) on the basis that "neither case presented any question as to the plaintiff's standing to bring the suit" which sought to challenge the validity of zoning ordinance amendments. *Id.*, 125 Idaho at 826, 875 P.2d 238.

The plaintiff, *Student Loan Fund*, further argued standing on the basis that it had a "particularized interest at stake" but as to this contention the court concluded as follows:

Status as an owner of land within a designated area does not relieve a complainant of the necessity of demonstrating a "distinct palpable injury" traceable to the challenged governmental conduct. It is the quality or magnitude of the injury suffered which must differentiate a plaintiff from the citizenry at large in order to confer standing. The situs of owned property in relationship to an area touched by an ordinance is relevant to a standing inquiry only insofar as the property's location exposes the landowner to peculiarized harm. The deficiency in the Fund's status is not that its injury is undifferentiated from that suffered by the general populous of Payette County, but rather, that it has shown no injury at all.

125 Idaho at 828, 875 P.2d at 240.

Therefore it is clear that based on the holding in *Student Loan Fund* that to have standing the land owner must allege or demonstrate an actual or potential harm or injury by reason of the challenged zoning ordinance amendment. By comparison, in *Jerome County v. Holloway* and

McCuskey v. Canyon County, the adopted zoning ordinances had a direct impact on the permit process at issue.

In *Butters v. Hauser*, 131 Idaho 498, 960 P.2d 181 (1998) a property owner brought a declaratory judgment action seeking to declare an amended zoning ordinance void. This action concerned a conditional use permit that was issued by Latah County to Hauser for a radio transmission tower. The permit was issued based on an amended zoning ordinance related to the issuance of conditional use permits. The district court had held that Butters did not have standing based on the Court of Appeals holding in *Student Loan Fund*. The Idaho Supreme Court disagreed with the district court and found that Butters did have a personal stake in both the amended ordinance and the issuance of the conditional use permit and that she had shown had demonstrated a "peculiarized harm":

[S]he owns land in close proximity to the tower; the tower looms over her land; and its physical invasiveness affects her enjoyment of her property. Although the location of her property alone does not confer standing, the location does expose her to peculiarized harm. In particular, Butters contends that she had to spend \$1,500 for a new telephone system to eliminate the tower's radio signal from her telephone and that the tower's radio signal still broadcasts through her daughter's compact disc system.

Id. 131 Idaho at 501, 960 P.2d at 184.

The court concluded that Butters had demonstrated the requisite peculiarized harm "as a result of the conditional use permit which was issued pursuant to a new appeal procedure prescribed by the ordinance amendment in question," and therefore had standing. *Butters v. Hauser, supra*.

2. Martin's standing

The court will now address the issue of Mr. Martin's standing to challenge the adoption of the 2008 amended comprehensive plan and amended zoning ordinance. In conducting such an

analysis this court must determine if the plaintiff has sufficiently pled or demonstrated a peculiarized harm resulting from the adoption of the 2008 amended comprehensive plan and amended zoning ordinance as discussed in the authorities cited above. In conducting this analysis the court must draw all reasonable inferences in favor of Martin as the non-moving party.

It is undisputed that at all relevant times Martin is a landowner as to some but not all of the property described below in Camas County. The property owned or in which Martin claims a financial interest was initially zoned as follows:

(1) forty acre parcel at 770 E. 240 N.- the property was zoned Agricultural (A) allowing one unit per twenty acres;

(2) twenty-nine acre parcel west of Soldier road.- the property was zoned Agricultural (A) allowing one unit per twenty acres; it had an R-7 designation on the comprehensive land use map which would be 7 units per acre;

(3) one acre lot within the existing, approved, and platted Homestead Subdivision - the property was zoned Agricultural Transitional (AT) allowing one unit per acre;

(4) Plaintiff had a fee simple ownership interest in two (2) 80 acre parcels, in section 4, that were sold to third parties while retaining a contractual fiscal interest in the development, marketing, and building potential thereon. The north parcel was zoned Agricultural Transitional (AT) allowing one unit per acre. The southern parcel was zoned Agricultural (A) allowing one unit per 20 acres. Each of these parcels is said to have had an R-7 land use designation on the comprehensive land use map;

(5) Plaintiff holds a first right of refusal as to a 67 acre parcel in Section 4 that was zoned Agricultural (A) allowing one unit per 20 acres. This parcel is said to have had an R-7 land use designation on the comprehensive land use map.

After the adoption of the 2008 amended comprehensive plan and amended zoning ordinance the property referred to above was rezoned as follows:

(1) forty acre parcel at 770 E. 240 N.- the property was rezoned Agricultural (A) allowing one unit per twenty acres;

(2) twenty-nine acre parcel west of Soldier road- the property was rezoned Residential (R-1) allowing one unit per acre and it lost its R-7 designation on the comprehensive land use map;

(3) one acre lot within the existing, approved, and platted Homestead Subdivision – the property was rezoned Residential (R-1) allowing one unit per acre;

(4) Plaintiff had a fee simple ownership interest in two (2) 80 acre parcels, in section 4, that were sold to third parties while retaining a contractual fiscal interest in the development, marketing, and building potential thereon. The north parcel was rezoned Agricultural Transitional (AT) allowing one unit per acre. The southern parcel was rezoned Residential (R-1) allowing one unit per acre. Each of these parcels is said to have lost its R-7 land use designation on the comprehensive land use map;

(5) Plaintiff holds a first right of refusal as to a 67 acre parcel in Section 4 that was rezoned Residential (R-1) allowing one unit per acre. This parcel is said to have lost its R-7 land use designation on the comprehensive land use map.

As a result of the rezone the property described above either did not change in its prior zoning designation or the property was up-zoned so as to allow a greater density in development, although some of the plaintiff's property lost the R-7 designation on the amended comprehensive land use map. It is undisputed that at no time was there ever any property in Camas County that was actually zoned R-7; that R-7 was only a designation on the original comprehensive land use map; and that after the amendments the R-7 designation ceased to exist.

The plaintiff in his affidavit (§ 15) admits that on April 17, 2007, on behalf of a third party he filed an application to rezone approximately 181 acres from (A) or (AT) to R-7. This application for rezone was filed prior to the 2007 zoning amendments (declared void in CV-2007-24) and the 2008 zoning amendments. The parties admit that the application is pending and has not been fully processed by the County. The law is relatively clear that this application would be processed under the zoning ordinance and comprehensive plan in existence at the time of the filing of the application and would not be processed under the 2008 amended comprehensive plan and zoning ordinance. *Chisholm v. Twin Falls County*, 139 Idaho 131, 134-135, 75 P.3d 185, 188-189 (2003); *Payette River Property Owners Ass'n. v. Board of Comm'rs of Valley County*, 132 Idaho 551, 976 P.2d 477 (1999). The mere fact that the comprehensive

land use map may have designated some of the plaintiff's property as R-7 for development does not mean that the County would be compelled to rezone the property as such since the comprehensive land use map is but one component to the comprehensive plan and does not act as "legally controlling zoning law." *Bone v. City of Lewiston*, 107 Idaho 844, 693 P.2d 1046 (1984).

a. 160 acre "downzone" from R-7 designation on comprehensive land use map.

The plaintiff alleges in his affidavit (§ 16) that the 2008 amendments to the comprehensive plan and zoning ordinance "had the effect of up zoning approximately twenty thousand (20,000) acres of real property in Camas County and **down zoning the approximate one hundred sixty (160) acres; the later in which I hold an economic interest.**" The court in *Highlands Development Corp. v. City of Boise*, 145 Idaho 958, 962, 188 P.3d 900, 904 (2008), citing *McCuskey*, indicated that a "landowner" could seek relief by way of an independent action, i.e., declaratory judgment action, in those circumstances where a planning and zoning decision resulted in the down-zoning of the landowner's property. This court would note that the plaintiff no longer claims to be a landowner of the property that was designated R-7 on the original comprehensive land use map. Plaintiff admits that the property in question was sold to Soldier Star Development, LLC, which is not a party to this action. The plaintiff cites to no authority that grants to a party who, is not a landowner, standing to challenge a zoning ordinance.

It is clear that the plaintiff contends that the elimination of the R-7 designation as part of the comprehensive land use map is a "down zone." However, this contention is not supported by the law for the reasons set forth above. The undisputed evidence is that the amended zoning ordinance left the plaintiff's actual zoning designation and density the same or allowed the plaintiff a greater density in development, i.e. an up-zone. Further, the plaintiff admits that he has

a pending application to rezone the subject property to R-7 based on the comprehensive plan and zoning ordinance in effect at the time the application was filed. Because there has been no determination on the plaintiff's application to rezone to R-7, any harm to plaintiff's property is purely speculative—he cannot show that he has been harmed due to a downzone because no such downzone has actually occurred and also the fact that he is not a landowner as to this property.

The plaintiff in his affidavit (¶'s 23-25) that the county zoned certain property R-4 that is located north and south of the property in which he claims to have sold but retained some contractual interest in the development and sale of such property that was rezoned to R-1. This is the same property for which he has a pending rezone application for R-7 rezone under the pre-existing ordinance and is the same property for which he has no ownership interest and is therefore not a landowner. As to these arguments the plaintiff, he has failed to demonstrate the requisite “peculiarized harm” for the purpose of standing.

b. Increased inventory.

As another basis for standing the plaintiff in his affidavit (¶'s 26-27) asserts that the rezone of approximately 20,000 acres to “allow various densities of residential housing,” which was previously designated for agricultural use, creates an “over supply of residential property” and a “diminished demand on all residential property in general.” The plaintiff relies upon the holding in *Ameritel Inns, Inc. v. Greater Boise Auditorium District*, 141 Idaho 849, 119 P.3d 624 (2005) for his proposition that increase in the residential inventory and the resulting diminished demand gives him the requisite standing.

In *Ameritel*, the plaintiffs consisted of individual voters residing within the boundaries of the Auditorium District and Ameritel Inns, which operated three hotels within the boundaries of the Auditorium District. The plaintiffs sought to enjoin the use of public funds by the

Auditorium District to influence a bond election to expand its facilities for the construction of a second convention center. The court addressed the issue of standing for both the individual voters and Ameritel. As to the individual voters, the court concluded that they lacked standing because there was no allegation that the Auditorium District did anything to "invade the privacy or sanctity of the voting booth." *Van Valkenburgh v. Citizens of Term Limits*, 135 Idaho 121, 15 P.3d 1129 (2000). The court further held that the allegation that expenditure of public funds "increased the chances of its passage" was not sufficient to confer standing to the individual voters. *Id.* 141 Idaho at 852, 119 P.3d at 627.

As for the plaintiff Ameritel, it claimed to have standing as a "taxpayer," that the expansion of the convention center "would negatively impact Ameritel's business," and that the use of tax monies would "finance speech with which Ameritel disagreed, in violation of its First Amendment Rights." *Id.* 141 Idaho at 852, 119 P.3d at 627. The court held that Ameritel had standing for two reasons: (1) that it was a taxpayer; and (2) the claim that the proposed expansion of the convention center would negatively impact its business in that the District's increase in meeting space would be in competition with the meeting space of Ameritel was a sufficient allegation of a "particularized injury that is not one suffered alike by all citizens within the boundaries of the Auditorium District." *Id.* 141 Idaho at 852-853, 119 P.3d 627-628. The court's finding of standing was directly related to the fact that Ameritel was a "taxpayer" since the Auditorium District was funded in part by a tax on the receipts of hotels and motels within the District boundaries and as such Ameritel was among a limited number of taxpayers. Ameritel's taxpayer status was "relevant to standing because its claim in this case is directly related to the tax it is required to pay." *Id.* 141 Idaho at 853, 119 P.3d at 628.

Ameritel is distinguishable from the instant case. Plaintiff Martin admits that the rezone "increased values of property originally with a land use of agricultural only." (Martin Affidavit ¶ 26). Mr. Martin by his own admission has not been harmed by the rezone as to the value of his property. Prior to the rezone all of his property was zoned either Agricultural (A) [one unit per 20 acres] or Agricultural Transitional (AT) [one unit per acre] and after the rezone his property was zoned either Agricultural (A) [one unit per 20 acres]; Agricultural Transitional (AT) [one unit per acre]; or Residential (R-1) [one unit per acre]. Further, as to the discussion in *Ameritel* as to increased competition, in the area of zoning decisions, the vast majority of jurisdictions have concluded that reduced income or value based on competition is not the type of injury that gives rise to standing to sue. *Westborough Mall, Inc. v. City of Cape Girardeau, Mo.*, 693 F.2d 733, 747 (8th Cir. 1982); *Earth Movers of Fairbanks, Inc. v. Fairbanks N. Star Borough*, 865 P.2d 741, 745 (Alaska, 1993); *Swain v. Winnebago County*, 250 N.E.2d 439, 444 (Ill. 1969); *E. Serv. Ctrs., Inc. v. Cloverland Farms Dairy, Inc.*, 744 A.2d 63, 67 (Md. Ct. App. 2000); *Cummings v. City Council of Gloucester*, 551 N.E.2d 46, 50 (Mass. Ct. App. 1990); *City of Eureka v. Litz*, 658 S.W.2d 519, 523 (Mo. Ct. App. 1983); *Copple v. City of Lincoln*, 315 N.W.2d 628, 630 (Neb. 1982); *Nautilus of Exeter, Inc. v. Town of Exeter*, 656 A.2d 407, 408 (N.H. 1995); *Rockland Hospitality Assocs., LLC v. Paris*, 756 N.Y.S.2d 585, 586-587 (2003); *City of Pittsburgh*, 620 A.2d 692, 696 (Pa. 1993); *ATC South, Inc. v. Charleston County*, 669 S.E.2d 337, 343 (S.C. 2008).

This court would note from the evidence provided that the plaintiff has not identified any land use applications that are pending or that have been granted by the County which have caused or will cause any particular harm to the plaintiff or any of his alleged financial interests. The potential for a development of the land at one density is not the same as the immediate

ability to develop the land at that density. Ameritel was actually engaged in a business which included the rental of meeting space, and the action supported by the District would have directly resulted in increased competition through the availability of additional meeting space, however, it was not the mere competition that gave rise to standing but the fact that the Auditorium District was using the tax dollars of Ameritel, a taxpayer, to fund such competition. If the Auditorium District had not sought to use taxpayer funds to compete with Ameritel, then Ameritel would not have had the requisite standing to sue. The plaintiff has not established that he was actually engaged in development or even that he had the immediate ability, through a lawful permit, to develop. As such, the plaintiff has failed to support his argument that the rezone by the County caused him particularized harm due to the potential for added inventory of residential property.

c. Procedural allegations regarding notice.

Martin further alleges that through the course of the proceedings that the County failed to comply with certain statutory notice requirements. However, Martin himself does not allege and in fact admits that he had notice of and attended all proceedings relative to the adoption of the amended comprehensive plan and amended zoning ordinance. Martin has failed to show that he has suffered any particularized harm as a result of any defect in the notice procedures. Martins' case is distinguishable from *McCuskey* since it was undisputed that Mr. McCuskey did not have notice of the proceedings relative to the adoption of the amended comprehensive plan and zoning ordinance. Assuming arguendo that the notices of the various public hearings may have been defective in some respect does not confer standing absent a showing of a peculiarized harm or the denial of due process as to him. *Cowan v. Board of Com'rs. Of Fremont County*, 143 Idaho 501, 513, 148 P.3d 1247, 1259 (2006); *Rural Kootenai Organization, Inc. v. Board of Com'rs.*,

133 Idaho 833, 841, 993 P.2d 596, 604 (1999); *Student Loan Fund of Idaho, Inc. v. Payette County*, 125 Idaho 824, 828, 875 P.2d 236, 240 (Ct. App. 1994).

3. Conclusion.

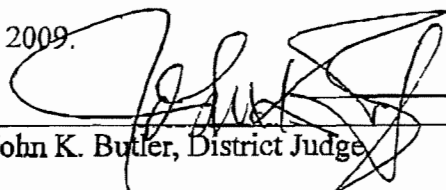
To have standing to challenge legislative action in a declaratory judgment action the plaintiff would have to make an adequate showing of a "distinct palpable injury" to himself and a " 'fairly traceable' causal connection between the claimed injury and the challenged conduct." *Rural Kootenai Org., Inc. v. Board of Com'rs*, 133 Idaho 833, 841, 993 P.2d 596, 604 (1999). Martin in his brief in opposition argues that the rezone will reduce the value of the lands that he has an economic interest in; that he will suffer decrease in available services and an increase in taxes; and that the rezone will prevent him from developing the land as he would have been able under the pre-existing zoning scheme. (Plaintiff's Memorandum Response, pg. 15). However, there are no such factual allegations actually alleged in the plaintiff's complaint. Further, the affidavit of Mr. Martin does not allege that his taxes have increased as a result of rezone; the affidavit does not allege that there has been a decrease in available services to his property or what services are not available to his property; he admits that the rezone increased the value of agricultural land, which his land was previously zoned. As to the allegation that he cannot develop his land as he had intended, such an allegation is contrary to the facts and law — Martin had filed an application on behalf of the current landowner for rezone under the prior existing zoning ordinance which is still pending. It simply is yet undetermined whether the land can be developed as intended. Finally, it is clear that the alleged injury as claimed is not particular to Martin but would be common to all landowners subject to the rezone. "It is the quality or magnitude of the injury suffered which must differentiate a plaintiff from the citizenry at large in order to confer standing." *Student Loan Fund, supra*. The plaintiff alleges numerous defects in

the adoption of the 2008 zoning ordinance and comprehensive plan. However, he does not have standing merely because he "is a concerned citizen who seeks to ensure that a governmental entity abides by the law." *Ameritel, supra, citing Thomson v. City of Lewiston*, 137 Idaho 473, 50 P.3d 488 (2002). The plaintiff lacks standing and has failed to show any dispute as to any material fact relevant to the issue of standing. In as much as the court has found that the plaintiff lacks standing to seek declaratory judgment as to the validity of the 2008 amended comprehensive plan and amended zoning ordinance, this court need not address the merits of the plaintiff's substantive claims.

For the reasons set forth above, the plaintiff Martin lacks standing to bring this declaratory judgment action and the defendant's motion for summary judgment is hereby granted based on a lack of standing. The complaint for declaratory judgment is hereby **dismissed with prejudice**.

IT IS SO ORDERED.

DATED this 6 day of May, 2009.



John K. Butler, District Judge

CERTIFICATE OF MAILING/DELIVERY

I, undersigned, hereby certify that on the 7th day of MAY, 2009, a true and correct copy of the foregoing MEMORANDUM DECISION AND ORDER RE: DEFENDANT'S MOTION FOR SUMMARY JUDGMENT was mailed, postage paid, and/or hand-delivered to the following persons:

Christopher P. Simms
Attorney at Law
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Ketchum, Idaho 83340

Paul Fitzer
Attorney at Law
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Suite 520
Boise, Idaho 83702

Korri Bodgett
Deputy Clerk

25 MEMORANDUM DECISION AND ORDER RE: DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

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Shirley No. 813

PLAINTIFF'S
EXHIBIT

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FILED
10-28-08
HR 1125 AM

ROBERT D. WILSON
BARRISTER AT LAW

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF CAMAS

GEORGE MARTIN,

Plaintiff,

and

MARTIN CUSTOM
HOMES, LLC,

Plaintiff,

v.

CAMAS COUNTY, IDAHO,
By and through the duly elected
Board of Commissioners in
their official capacity,

KEN BACKTROM,
BILL DAVIS, and
RON CHAPMAN,

Defendants.

Case No. CV-08-40

STIPULATION AS TO FACTS
AND ADMISSION OF DOCUMENTARY
EVIDENCE

STIPULATION AS TO FACTS AND ADMISSION OF DOCUMENTARY
EVIDENCE

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EXHIBIT

B

Comes now the parties hereto, through counsel, and hereby stipulate to admission of the following exhibits into evidence and the following facts for purposes of submission of the legal issues herein.

DOCUMENTARY EVIDENCE

A. The parties stipulate to the admission into evidence of each of the following Plaintiff's exhibits

- Exhibit A Published Notice of Planning and Zoning Commission Hearing on Zoning Ordinance and Comprehensive Plan, Camas Courier April 2, 2008, for hearing on April 21, 2008.
- Exhibit B Published Notice of Board of County Commissioners Hearing on Zoning Ordinance and Comprehensive Plan, Camas Courier April 23, 2008, for hearing on May 12, 2008.
- Exhibit C Findings of Fact and Conclusions of Law by the Camas County Planning and Zoning Commission, dated April 22, 2008 regarding Camas County Zoning Map.
- Exhibit D Findings of Fact and Conclusions of Law by the Camas County Planning and Zoning Commission, dated April 22, 2008 regarding Camas County Zoning Ordinance
- Exhibit E Findings of Fact and Conclusions of Law by the Camas County Planning and Zoning Commission, dated April 22, 2008 regarding Camas County Comprehensive Plan Map.

STIPULATION AS TO FACTS AND ADMISSION OF DOCUMENTARY EVIDENCE

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Response To Plaintiff's Motion -32

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- Exhibit F Findings of Fact and Conclusions of Law by the Camas County Planning and Zoning Commission, dated April 22, 2008 regarding Camas County Comprehensive Plan.
- Exhibit G Publication of adoption on May 12, 2008 of Zoning Ordinance No. 157, and Zoning Map Ordinance No. 158 Board of County Commissioners Hearing published in the Camas Courier on May 14, 2008.
- Exhibit H Decision on Requirements of a "Transcribable Verbatim Record" and Other Records for Purposes of Preliminary Injunction dated December 28, 2007 in Case No. CV-07-24.
- Exhibit I Order Following Contempt Hearing and Order Expanding Preliminary Injunction dated March 11, 2008 in Case No. CV-07-24.
- Exhibit J Decision on Conflicts of Interests issue for Purposes of Preliminary Injunction dated April 2, 2008 in Case No. CV-07-24.
- Exhibit K Minutes of April 21, 2008 Planning and Zoning Public Hearing Minutes wherein Resolutions 114 and 115 and Ordinance 157 and 158 recommending adoption of an Amended Comprehensive Plan, Land Use Map, Zoning Ordinance and Zoning Designation Map.
- Exhibit L Minutes of April 21, 2008 Board of County Commissioners Public Hearing Minutes.
-

STIPULATION OF FACTS

STIPULATION AS TO FACTS AND ADMISSION OF DOCUMENTARY EVIDENCE

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Response To Plaintiff's Motion - 33

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B. The Planning and Zoning Commission nor the Board of Commissioners generated or considered new studies in adoption of the Comprehensive Plans of 2008.

C. Legal Notice of Public Hearing, was posted at:

- a. Camas Cloning County Line on US 46;
 - b. East and West Camas County Lines on US 20;
 - c. Camas County Annex;
 - d. Entry Road to West Magic Highway 75;
 - e. Soldier road from the North
- Notice was not posted at Fairfield City Hall.**

D. At the Board of County Commissioner level Legal Notice of Public Hearing, pursuant to RC 67-6509, was purportedly mailed to all political subdivisions providing services within the planning area. Legal Notice of Public Hearing was not mailed ^{to} ~~by~~ the City of Fairfield. No written verification of notice exists for service to the West Magic Fire Protection District.

F. Individual legal descriptions of the various zoning designations on the 2008 Comprehensive Plan, Land Use Map, Zoning Ordinance and Zoning Designation Map were not considered in adoption of same nor published with the Ordinances.

F. Publication of Zoning Ordinance 157 adopted May 12, 2008 did not include any legal descriptions. The publication provided: [t]he full text of Ordinance 157 is available for public inspection during normal office hours at the office of the Camas County Planning and Zoning Administrator.

STIPULATION AS TO FACTS AND ADMISSION OF DOCUMENTARY
EVIDENCE

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Response To Plaintiff's Motion -34

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- C. Publication of the Zoning Designation Map Ordinance No 158 adopted May 12, 2008 did not include any legal descriptions.
- H. Plaintiff owns in fee simple the following parcels of real property in Camas County as of May 12, 2008: a) 40-acre parcel 770 E 240 N., b) 29-acre parcel west of Soldier Road and South of Baseline Road, c) lots 3 & 4 Blk 5 Homestead Subdivision, within an existing approved and platted subdivision of one-acre lots.
- I. The above parcels of real property, in order were located within the named zoning district prior to and after the rezone process of 2006, 2007 & 2008 a) agricultural/agricultural, b) agricultural R1 c) AT/A5
- J. Plaintiff had a fee simple ownership interest in two (2) 80-acre parcels, in section 4, that were sold to third parties while retaining a contractual fiscal interest in the development, marketing, and building potential thereon. The north parcel was zoned AT before and after the 2006, 2007 & 2008 rezone process. The southern parcel was rezoned from AG to R1 as a result of the 2006, 2007 & 2008 zoning amendment process.
- K. Plaintiff holds a first right of refusal as to a 67-acre parcel in Section 4 that was rezoned from AG to R1 as a result of the 2006, 2007 & 2008 zoning amendment process.
- L. The parcels generally described in the two preceding paragraphs, numbered and I and J, were included in the R-7 land use designation in the Comprehensive Plan Land Use Map existing prior to the 2006 Comprehensive

STIPULATION AS TO FACTS AND ADMISSION OF DOCUMENTARY
EVIDENCE

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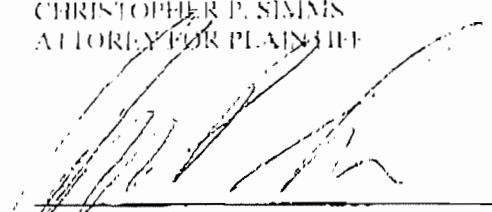
Response To Plaintiff's Motion -35

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Plan Amendments and R-1 land use designation in the post 2006 Comprehensive Plan Land Use Map amendments.


VI. The 29 acre parcel described in paragraph H subparagraph b, was included in the R-7 land use designation in the Comprehensive Plan Land Use Map existing prior to the 2006 Comprehensive Plan Amendments and R-1 land use designation in the post 2006 Comprehensive Plan Land Use Map amendments.

CHRISTOPHER P. SIMMS
ATTORNEY FOR PLAINTIFF



Christopher P. Simms

PAUL FITZER
MOORE, SMITH, BUXTON & TURKE, ATTORNEYS FOR DEFENDANT



Paul Fitzer

STIPULATION AS TO FACTS AND ADMISSION OF DOCUMENTARY
EVIDENCE

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P.O. Box 3123
Ketchum, ID 83340
Tel: 208 622 7878
Fax: 208 622 7921
ISB# 7473

Attorney for Plaintiff

FILED
5-29-09
HR 11:50 AM.
ROLLIE BENNETT
CLERK OF THE DISTRICT COURT
Rollie Bennett

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CAMAS

GEORGE MARTIN,)
)
Plaintiff,)

and)

MARTIN CUSTOM)
HOMES, L.L.C.,)
Plaintiff,)

v.)

ED SMITH,)

Defendant,)

and)

CAMAS COUNTY, IDAHO,)
By and through the duly elected)
Board of Commissioners in)
their official and capacity)

KEN BACKTROM,)
BILL DAVIS, and)
RON CHAPMAN,)

Defendants.)

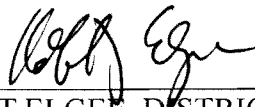
Case No. CV-07-24

ORDER REISSUING FINDINGS
OF FACT, CONCLUSIONS OF LAW,
AND ORDER FOLLOWING TRIAL

THE COURT, being fully apprised of the circumstances, having reviewed Plaintiffs' Motion for Order Re-issuing Findings of Fact, Conclusions of Law, and Order Following Trial, Defendants' Response thereto, and argument of counsel finds and orders as follows,

1. This Court was divested of jurisdiction over this matter on November 5, 2008, by the Defendants' filing of Notice of Removal to Idaho Federal District Court.
2. This Court was re-vested of jurisdiction over this matter on March 17, 2009 when the Idaho Federal District Court issued its Order granting Plaintiff's Motion to Remand.
3. This Court's December 3, 2008 Findings of Fact, Conclusions of Law, and Order Following Trial, issued during a period of interruption of this Court's jurisdiction, is hereby, this day reissued, is attached hereto and made a part hereof.

IT IS SO ORDERED

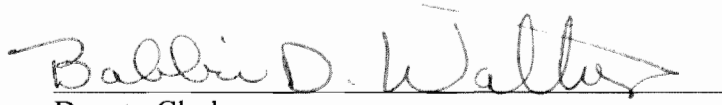


ROBERT ELGEE, DISTRICT JUDGE

DATED this 27 day of May, 2009.

CLERK'S CERTIFICATE

I HEREBY CERTIFY that on this 29 day of May 2009, I served a true and correct copy of the foregoing ORDER REISSUING FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER FOLLOWING TRIAL by delivering same, to Phillip J. Collaer, Attorney for Defendant Ed Smith, 250 South Fifth Street, Ste. 700, P.O. Box 7426, Boise Idaho 83707-7426, Paul Fitzer, Attorney for Camas County Defendants 950 W. Bannock St., Ste 520, Boise, Idaho 83702, and Christopher Simms, Attorney for Plaintiffs, P.O. Box 1861, Hailey, Idaho 83333.


Deputy Clerk

CHRISTOPHER P. SIMMS
Attorney at Law
Pine Street Station Bldg., Ste. 303
400 S. Main Street
P.O. Box 1861
Hailey, Idaho 83333
Tel: 208 788 2800
Fax: 208 788 2300
ISB# 7473

FILED
6-2-09
HR 4:30 P. M.
ROLLIE BENNETT
CLERK OF THE DISTRICT COURT
[Signature]

Attorney for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF CAMAS

GEORGE MARTIN,)
)
Plaintiff,)
)
and)
)
MARTIN CUSTOM)
HOMES, L.L.C.,)
)
Plaintiff,)
)
v.)
)
ED SMITH,)
)
Defendant,)
and)
)
CAMAS COUNTY, IDAHO,)
By and through the duly elected)
Board of Commissioners in)
their official capacities,)
)
)
KEN BAXTROM,)
BILL DAVIS, and)
RON CHAPMAN,)
)
Defendants.)
_____)

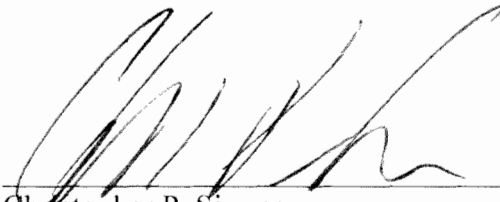
Case No. CV-07-24

PLAINTIFFS' MOTION FOR
ATTORNEY FEES & COSTS

COMES NOW, Petitioners by and through their attorney of record, Christopher P. Simms, and hereby moves this Court for an Order awarding Petitioners their attorney fees and costs, against Defendant Camas County, Idaho, through the duly elected Board of Commissioners, in their official capacities, Ken Backstrom, Bill Davis and Ron Chapman, as set forth in the Plaintiffs' Attorney Fees & Costs Memorandum filed contemporaneously herewith, and states further;

1. Plaintiffs' bring this Motion pursuant to I.R.C.P. 54(d)(1), (d)(5), and 54(e)(5) and I.C. Section 12-117. This motion is supported by (a) Plaintiffs' Attorney Fees and Costs Memorandum and (b) the Affidavit of Christopher P. Simms in Support of Plaintiffs' Motion for Attorney Fees and Costs; each filed contemporaneously herewith.
2. This motion is further supported by the I.C. Section 12-117 based attorney fee request in Plaintiffs complaint and amendments thereto.
3. Should Defendants' file a response to this Motion, the Plaintiffs' request an oral argument. If Defendants' file a response within the time permitted by the rules of civil procedure, Plaintiffs' will notice the matter for hearing. If Defendants' file no response within the time permitted, Plaintiffs' request the Court rule without oral argument.

CHRISTOPHER P. SIMMS
ATTORNEY FOR PLAINTIFF




Christopher P. Simms

6.1.09

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1 day of June 2009, I served a true and correct copy of the foregoing Plaintiff's Reply to Response to Motion for Leave to Amend Petition by delivering same, to Phillip J. Collaer, Attorney for Defendant Ed Smith, 250 South Fifth Street, Ste. 700, P.O. Box 7426, Boise Idaho 83707-7426, and Paul Fitzer, Attorney for Camas County Defendants 950 W. Bannock St., Ste 520, Boise, Idaho 83702.



Christopher Simms

CHRISTOPHER P. SIMMS
Attorney at Law
Pine Street Station Bldg., Ste 303
400 S. Main Street
P.O. Box 1861
Hailey, Idaho 83333
Tel: 208 788 2800
Fax: 208 788 2300
ISB# 7473

FILED
6-2-09
HR 4:30 P.M.
ROLLIE BELMONT
CLERK OF THE DISTRICT COURT
Baller D. Walter

Attorney for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF CAMAS

GEORGE MARTIN,)
)
Plaintiff,)
)
and)
)
MARTIN CUSTOM)
HOMES, L.L.C.,)
)
Plaintiff,)
)
v.)
)
ED SMITH,)
)
Defendant,)
and)
)
CAMAS COUNTY, IDAHO,)
By and through the duly elected)
Board of Commissioners in)
their official capacities,)
)
)
KEN BAXTROM,)
BILL DAVIS, and)
RON CHAPMAN,)
)
Defendants.)
_____)

Case No. CV-07-24

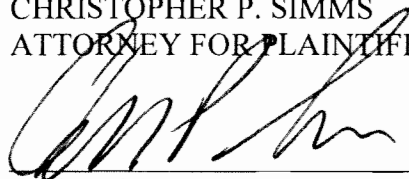
PLAINTIFFS' ATTORNEY FEES &
COST MEMORANDUM

COMES NOW PETITIONER, through his attorney of record and hereby submits this, his ATTORNEY FEES & COST MEMORANDUM pursuant to I.R.C.P. 54(d)(1), (d)(5), (e)(1) and (e)(5), claiming as costs the items stated and totaled herein below, and detailed on the attached monthly invoices (see Exhibit A).

Filing Fee	\$ 88.00
Attorney Fees (Including Cost and Paralegal fees)	\$ 82,920.39

TOTAL \$ 83,008.39

CHRISTOPHER P. SIMMS
ATTORNEY FOR PLAINTIFF




Christopher P. Simms

6.1.09

Dated

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1 day of JUNE 2009, I served a true and correct copy of the foregoing Plaintiff's Reply to Response to Motion for Leave to Amend Petition by delivering same, to Phillip J. Collaer, Attorney for Defendant Ed Smith, 250 South Fifth Street, Ste. 700, P.O. Box 7426, Boise Idaho 83707-7426, and Paul Fitzer, Attorney for Camas County Defendants 950 W. Bannock St., Ste 520, Boise, Idaho 83702.



Christopher Simms

CHRISTOPHER P. SIMMS

ATTORNEY AT LAW



P.O. Box 3123
Ketchum, Idaho 83340
208 622 7878
cpslaw@gmail.com

STATEMENT NO. DEC06GM
DATE December 31, 2006
CLIENT GEORGE MARTIN
FEE \$150

TO George Martin
RR 1 Box 1194
Fairfield, Idaho 83327

MATTER MARTIN v. SMITH, et al

Invoice for Legal Services Rendered

HOURS	DATE & DESCRIPTION	RATE	AMOUNT
2.00	11.10.06 Initial Consultation	\$150.00	\$300.00
3.00	11.22.06 Client Meeting	\$150.00	\$450.00
2.00	12.05.06 Legal Research	\$150.00	\$300.00
3.00	12.06.06 Client Meeting	\$150.00	\$450.00
2.00	12.07.06 Documentation Review	\$150.00	300.00
2.82	12.08.06 Eng. Ltr.; File Creation; Telcon w/ D. Foisy; Clt. Meeting	\$150.00	423.00
5.83	12.11.06 Legal Research; Documentation Review	\$150.00	874.50
3.33	12.12.06 Documentation Review; e-mail to Client	\$150.00	\$499.50
0.66	12.13.06 Telcon with Client	\$150.00	99.00
4.50	12.15.06 Legal Research & Drafting	\$150.00	675.00
6.50	12.19.06 Legal Research & Drafting; Telcon w/ D. Foisy	\$150.00	975.00
5.66	12.20.06 Legal Research & Drafting; e-mail D. Foisy	\$150.00	849.00
6.50	12.21.06 Legal Research & Drafting; Telcon w/ D. Foisy	\$150.00	975.00
0.66	12.22.06 Telcon w/ Client	\$150.00	99.00
0.83	12.26.06 Arrange Conf. Call; Telcon w/ D. Foisy; Review e-mails	\$150.00	124.50
2.00	12.28.06 Review Foisy e-mails & suit papers; Telcon w/ Foisy	\$150.00	300.00
	<i>Deduction of 8 hours legal research applicable to Smith Only</i>		<i>-\$1,200.00</i>
	Expenses: Postage .78 + Copies 214 @ .10 each = \$21.40		22.18
43.29			
SUBTOTAL			\$ 6,515.68
AMOUNT DUE			\$ 6,515.68

Make check payable to CHRISTOPHER P. SIMMS

THANK YOU FOR YOUR BUSINESS!

Plaintiffs' Attorney Fees: Cost memorandum - 3 pg 667

CHRISTOPHER P. SIMMS

ATTORNEY AT LAW

P.O. Box 3123
Ketchum, Idaho 83340
208 622 7878
cpslaw@gmail.com

STATEMENT NO. JAN07GM
DATE January 31, 2007
CLIENT GEORGE MARTIN
FEE \$150

TO George Martin
RR 1 Box 1194
Fairfield, Idaho 83327

MATTER Martin v. Smith, et al

Invoice for Legal Services Rendered

HOURS	DATE & DESCRIPTION	RATE	AMOUNT
	BALANCE FORWARD		\$6,515.68
2.50	01.02.07 Review e-mails; prepare Conf Call agenda; file review	\$150.00	\$375.00
	Conf Call w/ Fosiya & Costanzo; Telcon w/ Client		
0.17	01.03.07 Review e-mails	\$150.00	\$25.50
0.50	01.09.07 Telcon w/ Client; Attempt. Phone contact w/ Mayor & Saloman	\$150.00	75.00
0.66	01.11.07 Telcon w/ Pedro Saloman; Attempted tel. contact w/ Mayor; Client e-mail (2x)	\$150.00	99.00
1.83	01.12.07 Telcon w/ Client; Review file; Exhibit Identification	\$150.00	\$274.50
0.67	01.15.07 Telcon w/ Fairfield Mayor; e-mail Client	\$150.00	\$96.00
3.00	01.16.07 Attend Co. Bd. Of Commissioner's meeting	\$150.00	450.00
1.50	Travel Time; Fed. Reimburs. Rate 105 x .485 = \$50.93	\$150.00	\$275.93
0.75	Site Visit	\$150.00	112.50
0.17	01.18.07 Telcon w/ Client	\$150.00	25.50
1.50	01.30.07 Client Conference	\$150.00	\$225.00
	Expenses:		
	Copies: 15 @ .10 each		\$1.50
13.25			
SUBTOTAL			\$ 8,551.11
AMOUNT DUE			\$ 8,551.11

Make check payable to CHRISTOPHER P. SIMMS
THANK YOU FOR YOUR BUSINESS!

Plaintiffs' Attorney Fees & Cost Memorandum - 4 pg 6/6/8

Plaintiffs' Attorney Fees & Cost Memorandum - 5 pg 669

CHRISTOPHER P. SIMMS

ATTORNEY AT LAW

P.O. Box 3123
Ketchum, Idaho 83340
208 622 7878
cpslaw@gmail.com

STATEMENT NO. MAR07GM
DATE March 31, 2007
CLIENT GEORGE MARTIN
FEE \$150

TO George martin
RR1 Box 1194
Fairfield, Idaho 83327

MATTER Martin v. Smith, et al

Invoice for Legal Services Rendered

HOURS	DATE & DESCRIPTION	RATE	AMOUNT
	BALANCE FORWARD		\$8,914.11
0.16	03.01.07 Review e-mail re: Legislative vs. Quasi Judicial	\$150.00	\$24.00
	Telcon w/ Client		
0.25	03.07.07 Review e-mails from Client & Foisy	\$150.00	\$37.50
0.08	03.08.07 Review Board Meeting Agenda	\$150.00	12.00
1.45	03.09.07 R&R to client e-mail; File Review; <i>Telcon Mt. Express</i>	\$150.00	217.50
	Asst. Editor; Telcon w/ Dick Tucker; Telcon 1st Amer. Title (mess.)		
0.42	03.13.07 Review e-mails; Telcon w/ 1st Amer. Title (B. Service)	\$150.00	63.00
	re: maps & Commissioner owned property		
0.75	03.15.07 Client Conference	\$150.00	112.50
0.17	03.21.07 R&R Client e-mails; Telcon w/ Client	\$150.00	25.50
0.25	03.22.07 R&R Client e-mails	\$150.00	37.50
0.17	03.23.07 R&R Client e-mails	\$150.00	25.50
0.58	03.28.07 Review Client e-mail; Client Conf.	\$150.00	87.00
0.08	03.29.07 Review Client e-mail	\$150.00	12.00
	<i>Deduction of .25 hours 3.9.07 Non-Litigation</i>		<i>-\$37.50</i>
4.11			
SUBTOTAL			\$ 9,530.61
AMOUNT DUE			\$ 9,530.61

Make check payable to CHRISTOPHER P. SIMMS
THANK YOU FOR YOUR BUSINESS!

Plaintiffs' Attorney Fees & Cost Memorandum - 4 pg 670

CHRISTOPHER P. SIMMS

ATTORNEY AT LAW

P.O. Box 3123
Ketchum, Idaho 83340
208 622 7878
cpslaw@gmail.com

STATEMENT NO. APR07GM
DATE April 30, 2007
CLIENT GEORGE MARTIN
FEE \$150

TO George Martin
RR1 Box 1194
Fairfield, Idaho 83327

MATTER Martin vs. Smith, et al

Invoice for Legal Services Rendered

HOURS	DATE & DESCRIPTION	RATE	AMOUNT
	BALANCE FORWARD		\$9,530.61
0.17	4.2.07 R&R Client e-mail	\$150.00	\$25.50
0.42	4.4.07 R&R Client e-mail; E-mail Clt. Re: Rezone Application	\$150.00	\$63.00
0.50	4.5.07 Telcon w/ Client; Review e-mail	\$150.00	\$75.00
0.17	4.16.07 Review Client e-mail	\$150.00	25.50
0.17	4.19.07 R&R Client e-mail	\$150.00	25.50
0.33	4.22.07 R&R Client e-mail	\$150.00	49.50
1.50	4.23.07 Client Conf. w/ Calvin	\$150.00	225.00
1.00	File review, Amend Pleadings	\$150.00	\$150.00
0.25	4.24.07 R&R Client e-mail re: appraisal	\$150.00	37.50
5.00	4.25.07 File Review; Amend Petition; Research Chg of Venue	\$150.00	750.00
3.00	4.26.07 File Review; Research TRO & Prem. Inj.	\$150.00	450.00
	Deduction of .42 hours 4.4.07 applicable to Rezone		-\$63.00
	Deduction of 2 hours 4.25.07 applicable to Smith Only		-\$300.00
10.09			-
SUBTOTAL			\$ 11,044.11
AMOUNT DUE			\$ 11,044.11

Make check payable to CHRISTOPHER P. SIMMS
THANK YOU FOR YOUR BUSINESS!

Plaintiffs' Attorney Fees & Cost Memorandum - 7 pg 671

CHRISTOPHER P. SIMMS

ATTORNEY AT LAW

P.O. Box 3123
Ketchum, Idaho 83340
208 622 7878
cpslaw@gmail.com

STATEMENT NO. MAY07GM
DATE May 31, 2007
CLIENT GEORGE MARTIN
FEE \$150

TO George Martin
RR1 Box 1194
Fairfield, Idaho 83327

MATTER Martin vs. Smith, et al

Invoice for Legal Services Rendered

HOURS	DATE & DESCRIPTION	RATE	AMOUNT
	BALANCE FORWARD		\$11,044.11
7.00	05.01.07 Draft App. For TRO, Affidavit, Prep & Client Conf.	\$150.00	\$1,050.00
3.50	05.02.07 <i>Final Draft Pleadings & Cover Letter</i>	\$150.00	\$525.00
	Copies: 143 @ .15 ea. (\$21.45) Postage & Filing Fee (\$133.69)		\$155.14
0.33	05.03.07 Telcon w/ Client; E-mail Client; E-mail Mt. Express	\$150.00	49.50
0.33	05.07.07 Review File Stamped Plead.; Telcon & e-mail Press	\$150.00	49.50
0.75	05.08.07 Telcon clt., ct. clerk & sheriff; Review rules calander	\$150.00	112.50
1.00	05.09.07 <i>Interview w/ Mt. Express Reporter</i>	\$150.00	\$150.00
0.33	05.10.07 Telcon w/ Client	\$150.00	49.50
0.33	05.11.07 Telcon w/ Foisy; Review Steph Bonnie Entry	\$150.00	49.50
0.17	05.14.07 R&R Client e-mails (2x)	\$150.00	25.50
1.25	05.15.07 Telcon w/ Client; Review Obj, to TRO; Telcon w/ Delago	\$150.00	187.50
1.25	05.16.07 Research Obj.s; Ltr. To Client; Telcon w/ Client	\$150.00	187.50
	Copies: 38 @ .15 each (\$5.70)		\$5.70
4.50	05.17.07 Leagal Research; Client Meeting	\$150.00	675.00
0.17	05.18.07 Telcon w/ Client	\$150.00	25.50
0.50	05.23.07 R&R Client e-mail; Telcon w/ Client	\$150.00	75.00
0.25	05.25.07 R&R Client e-mail	\$150.00	37.50
	<i>Deduction of 1 hour 5.2.07 Applicable to Smith Only</i>		-\$150.00
	<i>Deduction of 1 hour 5.9.07 Applicable to Non-Litigation</i>		-\$150.00
19.66			-
SUBTOTAL			\$ 14,153.95
AMOUNT DUE			\$ 14,153.95

Make check payable to CHRISTOPHER P. SIMMS
THANK YOU FOR YOUR BUSINESS!

Plaintiffs' Attorney Fees & Cost Memorandum - 8

pg 672

CHRISTOPHER P. SIMMS

ATTORNEY AT LAW

P.O. Box 3123
Ketchum, Idaho 83340
208 622 7878
cpslaw@gmail.com

STATEMENT NO. JUN07GM
DATE June 30, 2007
CLIENT GEORGE MARTIN
FEE \$150

TO George Martin
RR1 Box 1194
Fairfield, Idaho 83327

MATTER Martin vs. Smith, et al

Invoice for Legal Services Rendered

HOURS	DATE & DESCRIPTION	RATE	AMOUNT
	BALANCE FORWARD		\$14,153.95
0.25	6.04.07 Telcon w/ Client	\$150.00	\$37.50
6.00	6.05.07 Draft response to Obj. to TRO; Telcon Opp. Counsel	\$150.00	\$908.40
	Telcon Client; Copies: 56 @ .15 each (\$8.40)		
0.75	6.29.07 Draft Mtn. to Enlarge Time to Resp. Smith Interrog.s	\$150.00	112.50
	Deduction of .75 hours 6.29.07 Applicable to Smith Only		-\$112.50
6.25			-
SUBTOTAL			\$ 15,099.85
AMOUNT DUE			\$ 15,099.85

Make check payable to CHRISTOPHER P. SIMMS
THANK YOU FOR YOUR BUSINESS!

Plaintiffs' Attorney Fees & Cost Memorandum - 9

pg 673

CHRISTOPHER P. SIMMS

ATTORNEY AT LAW

P.O. Box 3123
Ketchum, Idaho 83340
208 622 7878
cpslaw@gmail.com

STATEMENT NO. JUL07GM
DATE July 31, 2007
CLIENT GEORGE MARTIN
FEE \$150

TO George Martin
RR1 Box 1194
Fairfield, Idaho 83327

MATTER Martin vs. Smith, et al.

Invoice for Legal Services Rendered

HOURS	DATE & DESCRIPTION	RATE	AMOUNT
	BALANCE FORWARD		\$15,099.85
1.00	7.02.07 R&R to Client e-mail; Telcon w/ Client	\$150.00	\$150.00
1.50	7.05.07 Legal Research re: TRO remedy	\$150.00	\$225.00
6.00	7.06.07 Research & Writing; e-mail & telcon w/ client	\$150.00	\$900.00
3.00	7.09.07 Research & Writing; Telcon w/ Client	\$150.00	450.00
4.00	7.10.07 Research & Writing; Memo & TRO destruction rec.s	\$150.00	600.00
3.50	7.11.07 Telcon w/ Opp. Counsel re: TRO v. Consent Order;	\$150.00	525.00
	Draft Consent Order; Telcon w/ Client; Final Edit Memo		
1.00	7.12.07 Telcon w/ Clt.; Phone mess. Opp Counsel; Review Clt.	\$150	\$153.60
	e-mail; Final draft Resp. Brief; Copies: 24 @ .15 ea. (\$3.60)		
3.58	7.13.07 Comp. TRO App. & proposed Order re: Destruction	\$150.00	537.00
	Telcon w/ Ct. Clerk. Opp. Counsel, Client (3x); File Docs.; Draft		
	Interrogs. & request to Prod.; Conf Ct. Clerk		
	Copies: 46 @ .15 ea. (\$6.90) Postage: \$2.34		\$9.24
0.33	7.16.07 <i>Review Notice of Non-opp. To Mtn. for Enlarge of</i>	\$150.00	49.50
	Time; Review Camas Co. Def's interrogs; Draft note to client		
1.83	7.17.07 Telcon w/ Client (3x); Review Plead. By Def.; E-mail Clt.	\$150.00	274.50
	Draft Notice of Service & Requests to Prod.; Review Clt. E-mail		
	Fax to Client		
2.75	7.18.07 Client Conf.	\$150.00	412.50
3.00	7.19.07 Telcon w/ Clt (5x); Prep. & TRO Hear.; edit RFD	\$150.00	450.00
	Copies: 42 @ .15 ea. (\$6.30)		\$6.30
0.17	Telcon w/ Ct. Clerk	\$150.00	25.50
SUBTOTAL			\$ 19,867.99
TOTAL			See Page Two

Make check payable to CHRISTOPHER P. SIMMS
THANK YOU FOR YOUR BUSINESS!

Plaintiffs' Attorney Fees & Cost Memorandum - 10

pg 674

CHRISTOPHER P. SIMMS

ATTORNEY AT LAW

P.O. Box 3123
Ketchum, Idaho 83340
208 622 7878
cpslaw@gmail.com

STATEMENT NO. JULY07GM Page 2
DATE July 31, 2007
CLIENT GEORGE MARTIN
FEE \$150

TO George Martin
RR1 Box 1194
Fairfield, Idaho 83327

MATTER Martin vs. Smith et al

Invoice for Legal Services Rendered

HOURS	DATE & DESCRIPTION	RATE	AMOUNT
31.66	BALANCE FORWARD		\$19,867.99
0.25	07.23.07 Review D. Fosily e-mails	\$150.00	\$37.50
0.50	07.24.07 Telcon w/ Client; Review & Distribute e-mail	\$150.00	\$75.00
0.33	07.25.07 Draft CVR Ltr to Clerk; e-mail client; review notice of	\$150.00	\$49.50
	evidentiary hearing; Copies: 7 @ .15 ea (\$1.05) Postage: \$1.21		\$2.26
0.25	07.31.07 Telcon w/ Client; Review Ct. Order re: TRO	\$150.00	37.50
	Cert. of mail		
	<i>Deduction of .33 hours 7.16.07 Applicable to Smith Only</i>		<i>-\$49.50</i>
32.66			
SUBTOTAL			\$ 20,020.25
AMOUNT DUE			\$ 20,020.25

Make check payable to CHRISTOPHER P. SIMMS
THANK YOU FOR YOUR BUSINESS!

Plaintiffs' Attorney Fees & Cost Memorandum - 11

pg 675

CHRISTOPHER P. SIMMS

ATTORNEY AT LAW

P.O. Box 3123
Ketchum, Idaho 83340
208 622 7878
cpslaw@gmail.com

STATEMENT NO. AUG07GM
DATE August 31, 2007
CLIENT GEORGE MARTIN
FEE \$150

TO George Martin
RR1 Box 1194
Fairfield, Idaho 83327

MATTER Martin v. Smith et al

Invoice for Legal Services Rendered

HOURS	DATE & DESCRIPTION	RATE	AMOUNT
	BALANCE FORWARD		\$20,020.25
0.50	8.01.07 <i>Paralegal: Prod. of Interrogs & Request to Produce</i>	\$50.00	\$25.00
0.25	8.06.07 File Review; E-mail w/ Client	\$150.00	\$37.50
0.50	8.07.07 Telcon w/ Client; Review Client e-mail	\$150.00	\$75.00
0.50	8.08.07 R&R to client e-mail (2x); Legal Research	\$150.00	75.00
4.00	8.09.07 <i>Draft Discovery Responses</i>	\$150.00	600.00
7.50	8.10.07 <i>Draft Discovery Responses; Copies: 32 @ .15 ea (\$4.80)</i>	\$150	\$1,129.80
1.33	8.13.07 <i>Retrieve copies; Review VM, e-mails & Telcon w/ Clt</i>	\$150.00	199.50
	Package & Del. Disc. Responses; Copies: 68 @ .15 ea (\$10.20)		\$10.20
	Print Shop invoice: \$51.32; Postage: \$11.40		\$62.72
1.75	8.13.07 <i>Draft answ to Interrogs; Camas Co. Cert. of Mail; Fax</i>	\$150.00	262.50
0.50	8.14.07 Review Ct. Order; Fax & Telcon Client	\$150.00	75.00
1.33	8.15.07 Telcon w/ Client; Review e-mail & ltr from Opp Counsel	\$150.00	199.50
	E-mail Opp Counsel; Draft Mtn. to Reconsider; Review Order		
0.50	8.16.07 Reread Order; Telcon Client; E-mail Opp Counsel	\$150.00	75.00
	re: Discovery		
0.33	8.20.07 Review Clt. E-mail re: Smith Discovery	\$150.00	49.50
1.00	8.21.07 <i>Review Porposed Stip. Re: Enlarge. Of Time; Fax Stip</i>	\$150.00	150.00
	to Opp Counsel; Draft Discovery Request to Smith		
3.00	8.22.07 <i>Draft Smith Discovery Requests</i>	\$150.00	450.00
0.17	8.23.07 <i>Draft Cover Ltr. To Clerk</i>	\$150.00	25.50
	Copies: 4 @ .15 ea (\$0.60); Postage \$1.21		\$1.81
0.33	8.24.07 <i>Edit Discovery Request</i>	\$150.00	49.50
SUBTOTAL			\$ 23,573.28
TOTAL			See Page Two

Make check payable to CHRISTOPHER P. SIMMS
THANK YOU FOR YOUR BUSINESS!

Plaintiffs' Attorney Fees & Cost Memorandum - 12 pg 676

CHRISTOPHER P. SIMMS

ATTORNEY AT LAW

P.O. Box 3123
Ketchum, Idaho 83340
208 622 7878
cpslaw@gmail.com

STATEMENT NO. AUG07GM Page 2
DATE August 31, 2007
CLIENT GEORGE MARTIN
FEE \$150

TO George Martin
RR1 Box 1194
Fairfield, Idaho 83327

MATTER Martin vs. Smith et al

Invoice for Legal Services Rendered

HOURS	DATE & DESCRIPTION	RATE	AMOUNT
22.99	BALANCE FORWARD		\$23,573.28
1.00	8.27.07 Final Edit Discovery; Draft Notice of Service; Fax to	\$150.00	\$150.00
	Opp. Counsel; Copies: 26 @.15 each (\$3.90)		\$3.90
	Deduction of .20 hours 8.1.07 Applicable to Smith Only		-\$10.00
	Deduction of 2 hours 8.9.07 Applicable to Smith Only		-\$300.00
	Deduction of 3.75 hours 8.10.07 Applicable to Smith Only		-\$562.50
	Deduction of 16 copies @ .15 each = \$2.40		-\$2.40
	Deduction of 1.54 hours 8.13.07 Applicable to Smith Only		-\$231.00
	Deduction of \$72.92 in copies & postage		-\$72.92
	Deduction of 1 hour 8.21.07 Applicable to Smith Only		-\$150.00
	Deduction of 3 hours 8.22.07 Applicable to Smith Only		-\$450.00
	Deduction of .17 hours 8.23.07 Applicable to Smith Only		-\$25.50
	Deduction of 4 copies @ .15 each + postage \$1.21		-\$1.81
	Deduction of .33 hours 8.24.07 Applicable to Smith Only		-\$49.50
	Deduction of 1 hour 8.27.07 Applicable to Smith Only		-\$150.00
	Deduction of 26 copies @ .15 each		-\$3.90
11.2 Atty			
.30 PL			
SUBTOTAL			\$ 21,717.65
AMOUNT DUE			\$ 21,717.65

Make check payable to CHRISTOPHER P. SIMMS
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Plaintiffs' Attorney Fees & Cost Memorandum -13

pg 677

CHRISTOPHER P. SIMMS

ATTORNEY AT LAW

P.O. Box 3123
Ketchum, Idaho 83340
208 622 7878
cpslaw@gmail.com

STATEMENT NO. SEPT07GM
DATE September 30, 2007
CLIENT GEORGE MARTIN
FEE \$150

TO George Martin
RR1 Box 1194
Fairfield, Idaho 83327

MATTER Martin vs. Smith et al

Invoice for Legal Services Rendered

HOURS	DATE & DESCRIPTION	RATE	AMOUNT
	BALANCE FORWARD		\$21,717.65
0.66	9.5.08 Telcon with Client; R&R to client e-mail 4x	\$150.00	\$99.00
2.00	9.6.07 Research Tort Claims Act	\$150.00	\$300.00
3.16	9.7.07 draft & submit Notice of Claim; telcon client; draft supplemental answers to interrogatory; postage \$2.26; copies 26	\$150.00	\$474.00
1.33	9.10.07 Telcon client 2x; telcon Opp Counsel re: Discovery R&R to client e-mail; Review Discovery Response	\$150.00	199.50
0.75	9.11.07 Review Client e-mail re: signed supp resp. Fax opp counsel review & fax Notice of Service; telcon client	150.00	112.50
	copies 5 @ .15 ea = .75		0.75
0.75	9.13.07 telcon Dennis Fosey	150.00	112.50
0.50	telcon client; file review re: Disc, draft let to clerk filing supp response to interogs; copies 6 @ .15 each + postage .42	150.00	75.00
0.33	review Objection to Notice of Hearing; e-mail client	150.00	49.50
0.75	telcon client; meeting Bob Rodman	150.00	112.50
4.00	9.14.07 Review Disc responses; telcon & VM client; VM Opp Counsel	150.00	600.00
2.50	9.16.07 Review Disc Resp; telcon client; hearing strategy	150.00	375.00
0.33	Draft letter Opp Counsel	150.00	49.50
2.25	9.17.07 Finalize Disc dispute; Ltr Opp Counsel; draft subpoenas review law re: transcribable record; telcon Terry Gregory	150.00	337.50
1.75	9.18.07 Review VM Opp Counsel; telcon Opp Counsel; telcon client; telcon Dennis Foisy; complete subpoenas	150.00	262.50
21.06			-
SUBTOTAL			\$ 24,885.08
AMOUNT DUE			See Page Two

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Plaintiffs Attorney Fees ? Cost Memorandum-14

pg 678

CHRISTOPHER P. SIMMS
ATTORNEY AT LAW

P.O. Box 3123
Ketchum, Idaho 83340
208 622 7878
cpslaw@gmail.com

STATEMENT NO. SEPT07GM - Page 2
DATE September 30, 2007
CLIENT GEORGE MARTIN
FEE \$150

TO George Martin
RR1 Box 1194
Fairfield, Idaho 83327

MATTER Martin vs. Smith et al

Invoice for Legal Services Rendered

HOURS	DATE & DESCRIPTION	RATE	AMOUNT
21.06	BALANCE FORWARD		\$24,885.08
1.25	9.19.07 telcon client 2x; telcon Opp Cousnel	\$150.00	\$187.50
4.00	9.20.07 Hearing Preparations	\$150.00	\$600.00
7.00	9.21.07 Hearing prep; draft brief; Marshall evidence	\$150.00	\$1,050.00
	copies 38 @ .15 each		\$5.70
4.00	9.23.07 Prepare Hearing exhibits and list; revise brief	\$150.00	600.00
	copies 32 @ .15 each		4.80
1.50	9.24.07 copy shop drop off & pick up; prepare hearing notes	150.00	225.00
	courtesy copy of brief to Court; fax Opp Counsel; Copies		13.43
4.00	9.25.07 hearing on App for Prelim Injunction	150.00	600.00
1.50	Travel Time	150.00	225.00
	Federal Reimbursement 82 miles x .485		39.77
0.33	9.28.07 Telcon with Client	150.00	49.50
44.64			
SUBTOTAL			\$ 28,485.78
AMOUNT DUE			\$ 28,485.78

Make check payable to CHRISTOPHER P. SIMMS
THANK YOU FOR YOUR BUSINESS!

Plaintiffs' Attorney Fees & Cost Memorandum-15 pg 679

CHRISTOPHER P. SIMMS

ATTORNEY AT LAW

P.O. Box 3123
Ketchum, Idaho 83340
208 622 7878
cpslaw@gmail.com

STATEMENT NO. OCT07GM
DATE October 31, 2007
CLIENT GEORGE MARTIN
FEE \$150

TO George Martin
RR1 Box 1194
Fairfield, Idaho 83327

MATTER Martin vs. Smith et al

Invoice for Legal Services Rendered

HOURS	DATE & DESCRIPTION	RATE	AMOUNT
	BALANCE FORWARD		\$28,485.78
0.75	10.02.07 Telcon w/ Clt. (2x0; Telcon both Opp Counsel	\$150.00	\$112.50
4.00	10.03.07 Draft Mtn. to Compel; Notices of Hearing; CVR Ltr. To	\$150.00	\$600.00
	Ct. Clerk; Postage: \$2.46; Copies: 39 @ .15 ea (\$5.85)		\$8.31
0.50	10.05.07 Redraft Notice of Hearing; CVR Ltr; Postage & Copies	\$150.00	\$75.00
0.50	10.09.07 Review Reply Brief; Telcon w/ Client	\$150.00	75.00
8.00	10.10.07 Research draft response to reply brief	\$150.00	1,200.00
11.00	10.11.07 Research draft response to reply brief	\$150.00	\$1,650.00
2.00	10.12.07 Draft Mtn. to Compel Smith Disc; Ltr to Smith Atty;	\$150.00	300.00
	Telcon w/ Client		
2.50	10.13.07 Research & Draft Mtn. for Leave to Amend; Prep for	\$150.00	375.00
	Hearing on Mtn. to Compel Camas Discovery		
1.00	10.15.07 Review Clt. E-mail re: Affidavit; Edit Reply Memo	\$150.00	150.00
7.50	10.16.07 Telcon w/ Client (2x) re: Mtn Setting; Telcon Opp Coun.;	\$150.00	1,125.00
	Draft Affidavit; Telcon w/ Ct. Clerk; Telcon Opp Counsel Collaer		
	Re: Discover, research & writing; Copies 68 @ .15 ea (\$10.20)		\$10.20
0.75	10.17.07 R&R client e-mails, Telcon w/ Clt (2x); Revw e-mail doc.s	\$150.00	112.50
0.66	10.18.07 R&R to Client e-mails	\$150.00	99.00
0.66	10.22.07 Telcon w/ Client; Revw Clt. E-mails; Revw. Opp Counsel	\$150.00	99.00
	e-mail; Telcon w/ Ct. Clerk (2x); Draft Mtn. to Enlarge Time		
39.82	Postage: \$1.23		\$1.23
SUBTOTAL			\$ 34,478.52
TOTAL			See Page Two

Make check payable to CHRISTOPHER P. SIMMS

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Plaintiffs' Attorney Fees ? Cost Memorandum-16 pg 680

CHRISTOPHER P. SIMMS

ATTORNEY AT LAW

P.O. Box 3123
Ketchum, Idaho 83340
208 622 7878
cpslaw@gmail.com

STATEMENT NO. OCT07 Page 2
DATE October 31, 2007
CLIENT GEORGE MARTIN
FEE \$150

TO George Martin
RR1 Box 1194
Fairfield, Idaho 83327

MATTER Martin v. Smith, et a;

Invoice for Legal Services Rendered

HOURS	DATE & DESCRIPTION	RATE	AMOUNT
39.82	BALANCE FORWARD		\$34,478.52
0.50	10.23.07 Review Clt. E-mail; Telcon w/ Client	\$150.00	\$75.00
2.33	10.26.07 Telcon w/ Client; Review Disc. Material from Opp Atty	\$150.00	\$349.50
3.33	10.29.07 Client Conf; Fax Opp Counsel	\$150.00	\$499.50
1.00	10.31.07 Review fax ltr from Opp Counsel; Draft Notices of Hear., and of Deposition; Ltr to Opp Counsel; Telcon w/ Client	\$150.00	150.00
	Deduction of .166 hours 10.2.07 Applicable to Smith Only		-\$24.90
	Deduction of 2 hours 10.12.07 Applicable to Smith Only		-\$300.00
	Deduction of .166 hours 10.16.07 Applicable to Smith Only		-\$24.90
44.64			-
SUBTOTAL			\$ 35,202.72
AMOUNT DUE			\$ 35,202.72

Make check payable to CHRISTOPHER P. SIMMS
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Plaintiffs' Attorney Fees & Cost Memorandum - 17 pg 681

CHRISTOPHER P. SIMMS

ATTORNEY AT LAW

P.O. Box 3123
Ketchum, Idaho 83340
208 622 7878
cpslaw@gmail.com

STATEMENT NO. NOV07GM
DATE November 30, 2007
CLIENT GEORGE MARTIN
FEE \$150

TO George Martin
RR1 Box 1194
Fairfield, Idaho 83327

MATTER Martin v. Smith, et al

Invoice for Legal Services Rendered

HOURS	DATE & DESCRIPTION	RATE	AMOUNT
	BALANCE FORWARD		\$35,202.72
1.25	11.01.07 Review Smith Disc. Responses; Telcon w/ Client	\$150.00	\$187.50
3.50	11.02.07 Mtn. for Leave to Amend; File Review; Ltr to Opp Atty;	\$150.00	\$525.00
	Telcon w/ Client (3x); Telcon w/ Ct. Clerk (2x)		
0.08	11.03.07 Telcon w/ client	\$150.00	12.00
0.50	11.04.07 Review Clt. E-mail; Print Docs; Copies: 83 @ .15 ea	\$150.00	\$87.45
0.50	11.05.07 Draft Subpoenas; e-mail client	\$150.00	75.00
1.00	11.07.07 Final review & edit Mtn. for Leave to Amend; Fax CVR to	\$150.00	150.00
	Opp Counsel; Draft & pack Clerk CVR Ltr; Copies & Postage		\$3.97
7.00	P&Z presentation on rezone & prior preparation	\$150.00	1,050.00
	Travel Time Waived. Fed Reimburse. Rate: 105 x .485 = \$50.93		\$50.93
0.50	11.08.07 Telcon w/ Client (2x); Review evidence rules	\$150.00	75.00
0.66	11.09.07 File review; Telcon w/ Client; Draft Subpoenas & ltr	\$150.00	99.00
5.00	11.12.07 Hearing Prep; Copies: 67 @ .15 ea (\$10.05)	\$150.00	\$760.05
6.00	11.13.07 Prep & Hearing on Conflict Issues; Print Shop \$18.36	\$150.00	\$918.36
	Travel Time Waived. Fed Reimburse. Rate: 105 x .485 = \$50.93		\$50.93
1.75	11.14.07 Set up & Complete Conf Call re: Scheduling; Draft	\$150.00	262.50
	notices of hearing; Fax to Opp Counsel; Draft Ct. CVR ltr		
	Telcon w/ Client; Copies: 17 @ .15 ea (\$2.10); Postage .42		\$2.52
	Deduction of 1.25 hours 11.1.07 Applicable to Smith Only		-\$187.50
	Deduction of 7 hours 11.7.07 Applicable to Smith Only		-\$1,050.00
19.49	Deduction of reimbursement rate		-\$50.93
SUBTOTAL			\$ 38,224.50
AMOUNT DUE			\$ 38,224.50

Make check payable to CHRISTOPHER P. SIMMS
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Plaintiffs' Attorney Fees & Cost Memorandum - 18 pg 682

CHRISTOPHER P. SIMMS

ATTORNEY AT LAW

P.O. Box 3123
Ketchum, Idaho 83340
208 622 7878
cpslaw@gmail.com

STATEMENT NO. DEC07GM
DATE December 31, 2007
CLIENT GEORGE MARTIN
FEE \$150

TO George Martin
RR1 Box 1194
Fairfield, Idaho 83327

MATTER Martin v. Smith, et al

Invoice for Legal Services Rendered

HOURS	DATE & DESCRIPTION	RATE	AMOUNT
	BALANCE FORWARD		\$38,224.50
0.33	12.03.07 File Review re: Notice; Verify Notice of Hearing Dec. 11	\$150.00	\$49.50
0.17	12.09.07 Review Opp Counsel Faxed Ltr	\$150.00	\$25.50
0.25	12.10.07 Conf w/ Client re: Mtn. to Continue	\$150.00	37.50
1.25	12.11.07 Arrange Conf Call; Prep & Argue Mtn. for Leave to	\$150.00	187.50
	Amend; Prep & Dist Amended complaint;		
	Copies: 8 @ .15 ea (\$1.20) Postage .42		\$1.64
0.17	12.12.07 Telcon w/ Client	\$150.00	\$25.50
0.17	12.17.07 Review Ltr from Opp Counsel re: Discovery	\$150.00	25.50
0.50	12.18.07 Telcon w/ Clt; Amend Mtn to Compel; Draft Notices	\$150.00	75.00
	Hearing & Mtn to Compel; CVR Ltr.		
	Postage \$1.64		\$1.64
	Deduction of .50 hours 12.18.07 Applicable to Smith Only		-\$75.00
	Deduction of Postage		-\$1.64
2.34			.
SUBTOTAL			\$ 38,577.14
AMOUNT DUE			\$ 38,577.14

Make check payable to CHRISTOPHER P. SIMMS
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Plaintiffs' Attorney Fees & Cost Memorandum - 19 pg 683

CHRISTOPHER P. SIMMS

ATTORNEY AT LAW

P.O. Box 3123
Ketchum, Idaho 83340
208 622 7878
cpslaw@gmail.com

STATEMENT NO. JAN08GM
DATE January 31, 2008
CLIENT GEORGE MARTIN
FEE \$150

TO George Martin
RR1 Box 1194
Fairfield, Idaho 83327

MATTER Martin v. Smith, et al

Invoice for Legal Services Rendered

HOURS	DATE & DESCRIPTION	RATE	AMOUNT
	BALANCE FORWARD		\$38,577.14
0.50	01.02.08 Telcon w/ Ct. Clerk; Telcon w/ Client; Review e-mail from Clerk; E-mail Client	\$150.00	\$75.00
0.75	01.03.08 Review Court's Opinion	\$150.00	\$112.50
0.66	01.06.08 <i>Draft Press Release - Applicable to Non-Litigation</i>	\$150.00	-\$99.00
0.25	01.07.08 Telcon w/ Cleint	\$150.00	37.50
2.50	1.10.08 Draft Requests for Admissions	\$150.00	375.00
2.17	01.14.08 Edit Requests for Admissions; Telcon w/ Client (2x); Review Mtn to Appeal Interlocutory Order; Draft Notices of Srv;	\$150.00	325.50
	CVR Ltr to Clerk; Fax CVR; Copies: 29 @ .15 ea; Postage .82		\$5.17
0.25	01.15.08 Review Cient VM; telcon w/ Client	\$150.00	37.50
0.33	01.18.08 Conf w/ Client	\$150.00	49.50
3.75	01.21.08 Draft Mtn for Contempt; Affidavit in Support & Notice Legal Research; Telcon & e-mail client (2x)	\$150.00	562.50
0.50	01.22.08 Telcon w/ Client; Review Clt e-mails; Fax Opp Counsel	\$150.00	75.00
	Copies: 22 @ .15 ea		\$3.30
1.50	01.27.08 Legal Research & Reading Interlocutory Appeal	\$150.00	225.00
4.00	1.28.08 Draft Memo of Law re: Interlocutory appeal; Hearing Preparations; Copies 27 @ .15 each = \$4.05	\$150.00	600.00
			\$4.05
3.00	1.29.08 Hearing Prep. & Conduct Hearing	\$150.00	450.00
1.16	1.30.08 Prep. Ct. Order & Notc. Of Hear; Telcon w/ Clerk; Ltr to Clerk; Fax & Telcon w/ Opp Counsel	\$150.00	\$174.00
20.66	1.31.08 Postage \$1.89; Copies 42 @ .15 ea = \$6.30		\$8.19
SUBTOTAL			\$ 41,597.85
AMOUNT DUE			\$ 41,597.85

Make check payable to CHRISTOPHER P. SIMMS
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Plaintiffs Attorney Fees : Cost Memorandum -20

pg 684

CHRISTOPHER P. SIMMS

ATTORNEY AT LAW

P.O. Box 3123
Ketchum, Idaho 83340
208 622 7878
cpslaw@gmail.com

STATEMENT NO. FEB08GM
DATE February 29, 2008
CLIENT George Martin
FEE \$150

TO George Martin
RR1 Box 1194
Fairfield, Idaho 83327

MATTER Martin v. Smith, et. Al

Invoice for Legal Services Rendered

HOURS	DATE & DESCRIPTION	RATE	AMOUNT
	BALANCE FORWARD		\$41,597.85
0.17	02.06.08 Review Client E-mail	\$150.00	\$25.50
0.17	02.10.08 Review Client E-mail	\$150.00	\$25.50
0.33	02.12.08 R&R to Client e-mail w/ attachments	150.00	49.50
0.33	02.14.08 R&R to Client e-mail w/ attachments	\$150.00	49.50
0.17	02.15.08 Review Client e-mail	150.00	25.50
0.33	02.18.08 R&R to Client e-mail	150.00	49.50
1.25	02.20.08 Review Resp. to Request for Admissions; E-mail Client	150.00	187.50
	Draft Ltr to Opp Counsel		
0.25	02.21.08 R&R to Client e-mail	150.00	37.50
1.16	02.22.08 Telcon w/ Ada Co Sheriff; Draft Subpoena & Sheriff instructions; E-mail Client	\$150.00	174.00
1.25	02.25.08 R&R to client e-mails w/ attachments (5x)	\$150.00	187.50
0.75	02.24.08 R&R to client e-mails w/ attachments (4x)	\$150.00	112.50
3.00	02.25.08 Preparation for Hearing	\$150.00	450.00
5.00	02.26.08 Conduct Conflict of Interest Evidentiary Hearing	\$150.00	750.00
	Travel Expenses: 105 x .505 = \$53.00		\$53.00
0.33	02.27.08 R&R to client e-mail re: new zoning map	\$150.00	49.50
0.25	02.28.08 Review Client e-mail	\$150.00	37.50
0.33	02.29.08 Telcon w/ Client; Client e-mails (6x)	\$150.00	49.50
15.07			
SUBTOTAL			\$ 43,911.35
AMOUNT DUE			\$ 43,911.35

Make check payable to CHRISTOPHER P. SIMMS
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Plaintiffs' Attorney Fees & Cost Memorandum - 21 pg 685

CHRISTOPHER P. SIMMS

ATTORNEY AT LAW

P.O. Box 3123
Ketchum, Idaho 83340
208 622 7878
cpslaw@gmail.com

STATEMENT NO. MAR08GM
DATE March 31, 2008
CLIENT George Martin
FEE \$150

TO George Martin
RR1 Box 1194
Fairfield, Idaho 83327

MATTER Martin v. Smith, et. Al

Invoice for Legal Services Rendered

HOURS	DATE & DESCRIPTION	RATE	AMOUNT
	BALANCE FORWARD		\$43,911.35
1.25	03.03.08 Contempt Hearing Prep; R&R client e-mails	\$150.00	\$187.50
4.33	03.04.08 R&R client e-mails; Telcon & VM Client; Telcon w/ Sheriff; Client Conf; Copies: 10 @ .15 each	\$150.00	\$649.50
2.25	03.05.08 Respond/Amend/Review Ltr. Draft Mtn to Determine Sufficiencies of Response	\$150.00	337.50
5.16	03.06.08 Prep for contempt hearing; R&R client e-mail; Draft Stipulation & Supp. Resp. Interrogatories	150.00	774.00
	Copies: In House 105 @ .15 ea (\$15.75) Print Shop \$19.24		\$34.99
7.00	03.07.08 Conduct Contempt Hearing	150.00	1,050.00
	Milage: 105 @ .505 = \$53.00		\$53.00
0.17	03.08.08 R&R Client e-mails	\$150.00	25.50
0.17	03.10.08 R&R Client e-mails	\$150.00	25.50
1.00	03.12.08 Cleint Conference	\$150.00	150.00
1.75	03.13.08 Conduct Status Conf; Telcon w/ Client re: Con. Trial	\$150.00	262.50
	E-mail client re: Moritorium (2x), Pre-trial, Trial & Meeting;		
	Fax Client		
0.25	03.15.08 E-mail Client re: Injunction(2x)	\$150.00	37.50
5.00	03.16.08 Legal Research & Writing; e-mail re: remedy	\$150.00	750.00
2.50	03.17.08 Draft & Distribute Brief;	\$150.00	375.00
	Copies: 68 @ .15 each = \$10.20; Postage \$8.24		\$18.44
3.00	03.18.08 Telcon w/ Client; Edit & Complete Brief	\$150.00	\$450.00
33.83	Copies: 52 @ .15 each = \$7.80; Postage \$1.64		\$9.44
SUBTOTAL			\$ 49,103.22
TOTAL			See Page Two

Make check payable to CHRISTOPHER P. SIMMS
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Plaintiffs' Attorney Fees & Cost Memorandum - 22 pg 686

CHRISTOPHER P. SIMMS

P.O. Box 3123
Ketchum, Idaho 83340
208 622 7878
cpslaw@gmail.com

STATEMENT NO. MAR08GM Page 2
DATE March 31, 2008
CLIENT GEORGE MARTIN
FEE \$150

TO George Martin
RR1 Box 1194
Fairfield, Idaho 83327

MATTER Martin v. Smith, et al

Invoice for Legal Services Rendered

HOURS	DATE & DESCRIPTION	RATE	AMOUNT
33.83	BALANCE FORWARD		\$49,103.22
1.00	03.19.08 E-mail client (4x); Review Ct. Order; Research	\$150.00	\$150.00
0.17	03.20.08 R&R Client E-mails	\$150.00	\$25.50
0.17	03.25.08 R&R Client E-mails	\$150.00	\$25.50
0.50	03.26.08 Telcon w/ Client (4x)	\$150.00	75.00
0.25	03.27.08 Telcon w/ Client (2x)	\$150.00	37.50
0.17	03.28.08 R&R client e-mails	\$150.00	25.50
1.75	03.31.08 Client meeting & telcon	\$150.00	262.50
37.84			-
SUBTOTAL			\$ 49,704.72
AMOUNT DUE			\$ 49,704.72

Make check payable to **CHRISTOPHER P. SIMMS**
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Plaintiffs' Attorney Fees & Cost Memorandum - 23

pg 1087

CHRISTOPHER P. SIMMS

ATTORNEY AT LAW

P.O. Box 3123
Ketchum, Idaho 83340
208 622 7878
cpslaw@gmail.com

STATEMENT NO. APR08GM
DATE April 30, 2008
CLIENT George Martin
FEE \$150

TO George Martin
RR1 Box 1194
Fairfield, Idaho 83327

MATTER Martin v. Smith, et. Al

Invoice for Legal Services Rendered

HOURS	DATE & DESCRIPTION	RATE	AMOUNT
	BALANCE FORWARD		\$49,704.72
0.25	4.1.08 Review client email, telcon client	150.00	37.50
1.33	4.2.08 telcon Ct. Law Clerk, review Ct Order re: conflict of interest, telcon client 2x, review and respond to client email	150.00	\$199.50
1.00	4.7.08 Telcon client, draft Press Release	\$150	150.00
0.75	4.8.08 complete& edit Press Release, review ltr from Judge Elgee	150.00	112.50
	VM Dave Konrad, VM client, review order from Sup Ct.	150.00	
0.50	telcon press, telcon client, fax Express Ct. Order	150.00	75.00
0.50	email Dave Konrad, review 2nd Sup Ct. Order	150.00	75.00
0.75	4.9.08 review & respond to Konrad email re: press release	150.00	112.50
	telcon client, telcon Pat Murphy, review email list		
0.50	paralegal compile email list and distribute press release	50.00	25.00
0.33	4.14.08 Paralegal review of Ltr. To Editor/Suggestions to atty	\$50.00	16.50
0.66	R&R to client e-mails (4x); Revw. & Edit Ltr to Camas Courier	\$150	99.00
0.25	4.15.08 R&R client e-mails; Telecon with Client	\$150	37.50
	Qwest Teleconferencing Bill Received		\$46.50
0.08	4.16.08 Paralegal telcon w/ Client (2x) re: Editing Tech & Invoices	\$50.00	4.00
1.00	4.16.08 review and respond to client email, telcon press	\$150.00	150.00
2.00	4.17.08 file review meeting/trial prep	150.00	300.00
5.50	4.18.08 Meeting with Client re: preparation for May Trial	\$150.00	825.00
4.50	04.20.08 Meeting w/ Clt. Re: Trial Preparations	\$150.00	675.00
4.25	04.21.08 Paralegal: Exhibit Preparation for May Trial	\$50.00	212.50
4.00	04.22.08 Paralegal: Exhibit Prep	\$50.00	200.00
SUBTOTAL			\$ 53,057.72
AMOUNT DUE			See Page Two

Make check payable to CHRISTOPHER P. SIMMS
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Plaintiffs Attorney Fees & Cost Memorandum - 24

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Plaintiffs' Attorney Fees & Cost Memorandum-25 pg 689

CHRISTOPHER P. SIMMS

ATTORNEY AT LAW

P.O. Box 3123
Ketchum, Idaho 83340
208 622 7878
cpslaw@gmail.com

STATEMENT NO. MAY08GM
DATE May 31, 2008
CLIENT George Martin
FEE \$150

TO George Martin
RR1 Box 1194
Fairfield, Idaho 83327

MATTER Martin v. Smith, et. Al

Invoice for Legal Services Rendered

HOURS	DATE & DESCRIPTION	RATE	AMOUNT
	BALANCE FORWARD		\$52,417.72
0.08	5.5.08 Paralegal Telcon w/ Client re: 5/7/08 meeting	\$50.00	\$4.00
0.08	5.6.08 Paralegal Telcon w/ Client re: 5/7/08 meeting	\$50.00	\$4.00
3.75	5.7.08 Meeting w/ Client, Dick Tucker &	\$150.00	\$562.50
3.00	5.8.08 Meeting w/ Client	\$150.00	\$450.00
3.50	Paralegal Trial Exhibit Preparations	\$50.00	\$175.00
6.00	5.12.08 Trial Preparation	\$150.00	\$900.00
6.00	5.13.08 Trial Preparation	\$150.00	\$900.00
1.50	Paralegal Trial Exhibit Preparations	\$50.00	\$150.00
0.50	5.14.08 Paralegal Trial Exhibit Preparations	\$50.00	\$25.00
8.00	trial exhibit & evidence organization - general trial prep	\$150.00	\$1,200
6.00	5.15.08 evidence & exhibit organization - trial prep	\$150.00	\$900.00
	Copies: 67 @ .15 each = \$ 10.35		\$10.35
11.75	5.16.08 - 5.19.08 Final trial preparation	\$150.00	1,762.50
	Copies: 49 @ .15 each = \$7.35		7.35
19.33	5.20.08 - 5.21.08 Travel time, Trial, Stipulation & Settlement	\$150.00	2,899.50
1.83	5.22.08 R&R to Client e-mails (x6)	\$150.00	\$274.95
65.66 Atty	Invoice from Copy & Print Trial Exhibits; copies & binding		\$456.01
5.66 PL			
SUBTOTAL			\$ 63,098.88
AMOUNT DUE			\$ 63,098.88

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Plaintiffs' Attorney Fees & Cost Memorandum - 24 pg 690

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CHRISTOPHER P. SIMMS

ATTORNEY AT LAW

P.O. Box 3123
Ketchum, Idaho 83340
208 622 7878
cpslaw@gmail.com

STATEMENT NO. JULY08GM
DATE July 31, 2008
CLIENT George Martin
FEE \$150

TO George Martin
RR1 Box 1194
Fairfield, Idaho 83327

MATTER Martin v. Smith, et. Al

Invoice for Legal Services Rendered

HOURS	DATE & DESCRIPTION	RATE	AMOUNT
	BALANCE FORWARD		\$63,623.88
0.50	7.1.08 Paralegal draft of Notice of Hearing, Ct. Clk. Cover Ltr,	\$50.00	\$25.00
	Fax Cover to Opp Counsel; Copies 10 @ .15 each + postage \$1.26		\$2.76
3.00	Legal Research; e-mail Client	\$150.00	\$450.00
0.17	7.2.08 Telcon w/ Client	\$150.00	\$25.50
0.83	7.7.08 Client Conf.; Draft Ltr to Opp Counsel	\$150.00	\$124.50
0.50	7.8.08 Telcon w/ client (x2); redraft ltr to Opp Counsel; fax &	\$150.00	\$75.00
	mail; copies 2 @ .15 each = .30 + postage .42		\$0.72
3.00	7.9.08 research	\$150.00	\$450.00
3.00	7.10.08 research & writing	\$150.00	\$450.00
3.50	7.11.08 Research & Writing TRO & <i>New Causes of Action</i>	\$150.00	\$525.00
	Telcon with Client; Copies of Docs for Research & Writing		
	57 @ .15 each = \$8.55		8.55
	<i>Deduction of 1.5 hours 7.11.08 New Cause of Action</i>		-\$225.00
12.5 Atty			
.5 PL			
SUBTOTAL			\$ 65,535.91
AMOUNT DUE			\$ 65,535.91

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Plaintiffs' Attorney Fees & Cost Memorandum -28

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CHRISTOPHER P. SIMMS

ATTORNEY AT LAW

P.O. Box 3123
Ketchum, Idaho 83340
208 622 7878
cpslaw@gmail.com

STATEMENT NO. AUG08GM
DATE August 31, 2008
CLIENT George Martin
FEE \$150

TO George Martin
RR1 Box 1194
Fairfield, Idaho 83327

MATTER Martin v. Smith, et. Al

Invoice for Legal Services Rendered

HOURS	DATE & DESCRIPTION	RATE	AMOUNT
	BALANCE FORWARD		\$65,535.91
2.50	7.31.08 Meeting with Client; Legal Research; Copies 63 @ .15 ea	\$150.00	\$384.45
3.50	8.5.08 Legal Research & Writing	\$150.00	\$525.00
3.50	8.6.08 Legal Research & Writing; multiple telcons with client	\$150.00	\$525.00
1.17	8.7.08 Plaintiff's Mtn for Leave to Amend Pet, 2nd Amend Pet	\$150.00	\$175.50
	Verified App for TRO & Notice of Hearing; Faxed to Opp Counsel;		
	Telcon with Ct. Clerk; Telcon with Client		
0.50	8.8.08 Mtn, Pet, TRO & Notice faxed to Clerk; Copies mailed	\$150.00	\$75.00
	to Clerk; copies 106 @ .15 ea. = \$15.90 + postage \$7.32		\$23.22
1.25	Courtesy Del. of Docs to Court; Draft Subpoenas, e-mail to	\$150.00	\$187.50
	Client; Review Client VM		
1.75	8.11.08 Status Conf & Conf with Client	\$150.00	262.50
5.00	8.15.08 Trial Preparation	\$150.00	750.00
4.00	8.18.08 Trial Preparation	\$150.00	\$600.00
9.00	8.19.08 Trial Preparation, including drafting of Trial Brief &	\$150.00	1,350.00
0.50	Witness List; Brief & List faxed to the Court & Opp Counsel	\$50.00	\$25.00
	30 copies @ .15 each + \$4.50		4.50
3.50	Paralegal Trial Preparation	\$50.00	175.00
8.00	8.20.08 Conduct Motions & Trial	\$150.00	1,200.00
1.50	Travel Time = 1.5 hours	\$150.00	225.00
	Federal Mileage Reimbursement Rate. .585 x 82 miles = \$47.97		47.97
45.67			
SUBTOTAL			\$ 72,071.55
AMOUNT DUE			See Page Two

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Plaintiffs' Attorney Fees & Cost Memorandum -29

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CHRISTOPHER P. SIMMS

ATTORNEY AT LAW

P.O. Box 3123
Ketchum, Idaho 83340
208 622 7878
cpslaw@gmail.com

STATEMENT NO. OCT08GM
DATE October 31, 2008
CLIENT George Martin
FEE \$150 per Hour
\$50 per Hour - Paralegal
MATTER Martin v. Smith, et. Al

TO George Martin
RR1 Box 1194
Fairfield, Idaho 83327

Invoice for Legal Services Rendered

HOURS	DATE & DESCRIPTION	RATE	AMOUNT
	BALANCE FORWARD		\$71,763.43
0.083	10.1.08 Brief Review of Opp Counsel Brief of 9.26.08	\$150.00	\$12.45
0.170	Telcon with client	\$150.00	\$25.50
0.083	10.6.08 Copy of Brief for Client; 32 @ .15 each = \$4.80	\$50.00	\$8.95
1.500	Full Review of Opp Counsel 9.26 Brief & Legal Research	\$150.00	\$225.00
0.083	10.10.08 Fax Judge's Ruling to Client	\$50.00	\$4.15
1.000	Review of Ruling and Telcon with Client re: same	\$150.00	\$150.00
3.333	10.13.08 Prep. Complaint & TRO App. 28 copies @ .15 ea	\$150.00	\$504.15
0.333	10.14.08 Client meeting re: Complaint & TRO	\$150.00	\$50.00
1.250	Redrafting various documents for filing	\$150.00	\$187.50
	40 copies @ .15 ea = \$6.00 x 4 sets for filing, legal file & client		\$24.00
	2 copies @ .15 each = .30		\$0.30
0.500	Client Conference; original & copy to client for filing (deduct 1/2)	\$150.00	\$75.00
	Camas County Filing Fee		\$88.00
0.333	Review Defendant's Response to TRO	\$150.00	\$50.00
	14 Copies @ .15 each = \$2.10		\$2.10
1.750	10.15.08 Telcon with client (x2); Amend docs.; File docs w Ct	\$150.00	\$262.50
	VM & Telcon with Opp. Counsel (x2); Telcon with Judge;		
	Telcon Court Clk re: dates and e-mail docs to client		
0.333	Draft Cover & Fax pleading and notice to Atty Fitzer	\$150.00	\$50.00
0.083	Draft Cover & Fax Notice to Court Clerk	\$150.00	\$12.45
	10 Copies @ .15 each = \$1.50		\$1.50
		SUBTOTAL	\$ 73,496.98
		AMOUNT DUE	See Page Two

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Plaintiffs' Attorney Fees & Cost Memorandum-32 pg 696

CHRISTOPHER P. SIMMS

ATTORNEY AT LAW

P.O. Box 3123
Ketchum, Idaho 83340
208 622 7878
cpslaw@gmail.com

STATEMENT NO. OCT08GM - Page 2
DATE October 31, 2008
CLIENT George Martin
FEE \$150 per Hour
\$50 per Hour - Paralegal
MATTER Martin v. Smith, et. Al

TO George Martin
RR1 Box 1194
Fairfield, Idaho 83327

Invoice for Legal Services Rendered

HOURS	DATE & DESCRIPTION	RATE	AMOUNT
	BALANCE FORWARD		\$73,496.98
	10.16.08 Faxes rec'd from Opp Counsel; Mtn to DQ Judge & Defendants' Answers to Complaint; Copies 15 @ .15 = \$2.25		\$2.25
0.250	Atty Review of Faxes	\$150.00	\$37.50
0.083	Fax Motion and Answers to Client	\$50.00	\$4.15
0.250	10.20.08 Telcon w Client (x2) re: Opp Coun Fax & New Judge	\$50.00	\$12.50
	Fax Objection to App for Prelim. Injunction to client		
	Telcon w/ Clk - fax assign. new Judge		
0.170	Legal Search for contact info. For Hon. John K. Bulter	\$50.00	\$8.50
0.250	10.21.08 Review Ct Clerk VM & Telcon with Court Clerk	\$150.00	\$37.50
0.083	Review faxed Ct. Order assigning Judge Butler	\$150.00	\$12.45
0.250	VM to and telcon with Opp Counsel	\$150.00	\$37.50
0.083	Conf Call with Opp Counsel & Ct. Clerk	\$150.00	\$12.45
0.170	Scheduling Telcon with Opp Counsel & Judge	\$150.00	\$25.50
0.170	Telcon with Client	\$150.00	\$25.50
0.170	Hearing Prep. - gather past Orders & Current filings for Atty	\$50.00	\$8.50
0.250	Two Faxes from Opp Coun reviewed; total copies 52 @ .15 ea	\$150.00	\$20.25
8.000	10.23.08 Preparation for hearing before Judge Butler	\$150.00	\$1,200.00
2.000	10.24.08 Preparation for hearing	\$150.00	\$300.00
0.500	Paralegal prep of hearing exhibits; Copy shop fee \$15.40	\$50.00	\$40.40
2.250	Conduct Hearing before Judge Butler	\$150.00	\$337.50
2.25	Travel time to/from Jerome County Court House	\$150.00	\$337.50
	Federal Milage Reimbursement Rate .585 x 136 miles = \$79.56		\$79.56
SUBTOTAL			\$ 76,036.49
AMOUNT DUE			See Page Three

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Plaintiffs' Attorney Fees & Cost Memorandum - 33 Pg 697

Plaintiffs Attorney Fees & Cost Memorandum - 34 pg 698

Plaintiffs' Attorney Fees & Cost Memorandum -35 pg 699

CHRISTOPHER P. SIMMS

ATTORNEY AT LAW

P.O. Box 3123
Ketchum, Idaho 83340
208 622 7878
cpslaw@gmail.com

STATEMENT NO. DEC08GM
DATE December 31, 2008
CLIENT George Martin
FEE \$150 per Hour - Attorney
\$50 per Hour - Paralegal
MATTER Martin v. Smith, et. Al

TO George Martin
RR1 Box 1194
Fairfield, Idaho 83327

Invoice for Legal Services Rendered

HOURS	DATE & DESCRIPTION	RATE	AMOUNT
	BALANCE FORWARD		\$72,233.13
0.083	12.1.08 Telcon with client re: update	\$150.00	\$12.45
0.170	Review & Respond to client e-mail	\$150.00	\$25.50
3.000	12.3.08 Consultation with Atty Worst; Review File and Legal Research	\$150.00	\$450.00
1.666	12.4.08 Telcon with client re: Judge Elgee Order; Review Decision; Telcon with Court Clerk	\$150.00	\$249.90
1.250	12.5.08 Paralegal Copies of Pleadings/Orders for Atty Worst	\$50.00	\$62.50
	Consultation; Reorganization of computer files; Copies 185 @ .15		\$27.75
0.170	Fax copy of Order from Judge Elgee to Client; Copy for Pick up	\$50.00	\$8.50
	Copies 34 @ .15 each		\$5.10
0.083	12.9.08 Telcon with Court Clerk re: Hearing Date Attys Fees	\$150.00	\$12.45
0.170	Draft Notice of Hearing Attys Fees 1.5.09; To Atty for Review	\$50.00	\$8.50
0.083	E-mail client with Hearing Date	\$50.00	\$4.15
1.500	Consultation with Atty Worst	\$150.00	\$225.00
0.170	Telcon with client	\$150.00	\$25.50
0.333	Fax Notice of Hearing to Opp Counsel & Copies for Court filing w/ cover letter to clerk; Copies 14 @ .15 each + postage \$1.26	\$50.00	\$16.65
			\$3.36
1.000	12.10.08 Review client e-mail; research & review file; Respond to client e-mail	\$150.00	\$150.00
1.500	Draft Motion Ordering Mediation (2007 case)	\$150.00	\$225.00
0.750	Paralegal draft Mtn on 2008 & Fed Cases	\$50.00	\$37.50
	draft Notice of Hearing on 2007 case - to Atty for review		
SUBTOTAL			\$ 73,782.94
AMOUNT DUE			See Page Two

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Plaintiffs' Attorney Fees & Cost Memorandum - 36 pg 700

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CHRISTOPHER P. SIMMS

ATTORNEY AT LAW

P.O. Box 3123
Ketchum, Idaho 83340
208 622 7878
cpslaw@gmail.com

STATEMENT NO. Jan09GM
DATE January 31, 2009
CLIENT George Martin
FEE \$150 per Hour - Attorney
\$50 per Hour - Paralegal
MATTER Martin v. Smith, et. Al

TO George Martin
RR1 Box 1194
Fairfield, Idaho 83327

Invoice for Legal Services Rendered

HOURS	DATE & DESCRIPTION	RATE	AMOUNT
	BALANCE FORWARD		\$75,300.25
	1.2.09 Invoice from Atty Worst for Consultation Fees		\$740.00
0.333	Telcon with Ct. Clerk; ltr & notice re: change in date for Atty Fee	\$150.00	\$50.00
	Hearing; Copies 6 @ .15 each + postage \$1.26		\$2.16
0.083	Review fax from Opp Counsel. Re: Obj. to Atty Fees. Copy 1 @ .15	\$150.00	\$12.60
6.000	Research Atty Fees Issue & other Objections of Opp Counsel	\$150.00	\$900.00
	Draft Obj to Removal & Motion to Remand; Telcon w/ Client x2;		
	Copies 31 @ .15 File Obj. with Fed Ct		\$4.65
0.333	1.7.09 Telcon Fed Ct Clk re: Consent; File Same; Draft Fed Ltr	\$150.00	\$50.00
0.417	Client Conf; Rev., revise, file Mtn to Appt Mediator; Rev. Fed		\$62.55
	Ct Crk e-mail re: Consent to Magistrate; Print file stamped		
	consent; copies 15 @ .15 each = \$2.25		\$2.25
0.250	1.9.09 Review Rezone File		
0.333	Telcon with Dwight Butlin; e-mail & telcon with Client	\$150.00	\$50.00
0.500	Finalize/edit Mtn for Mediation Order - Fed Case; 13 copies	\$150.00	\$76.95
0.420	1.12.09 Electronic Filing of Mtn for Med; Telcon with Client	\$150.00	\$63.00
0.750	R&R to client e-mail; Read Notice of Appeal	\$150.00	\$112.50
5.000	1.13.09 R&R client e-mail; Download & Review Rezone App	\$150.00	\$750.00
	Correspondence; Research App. Procedure; Draft Request		
	to Supp Clk's Record; Client Conference; Copies 47 @ .15 ea		\$7.05
0.083	1.14.09 Telcon with Client	\$150.00	\$12.45
0.250	Fax docs to clt; draft cvr ltr & fax cvr to clk for Req. to Supp		
	Record; Copies to Opp Coun; copies 19 @ .15 + postage \$2.52		\$5.37
SUBTOTAL			\$ 78,201.78
AMOUNT DUE			See Page Two

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Plaintiffs' Attorney Fees & Cost Memorandum - 38 pg 702

CHRISTOPHER P. SIMMS

ATTORNEY AT LAW

P.O. Box 3123
Ketchum, Idaho 83340
208 622 7878
cpslaw@gmail.com

STATEMENT NO. Jan09GM - Page 2
DATE January 31, 2009
CLIENT George Martin
FEE \$150 per Hour - Attorney
\$50 per Hour - Paralegal
MATTER Martin v. Smith, et. Al

TO George Martin
RR1 Box 1194
Fairfield, Idaho 83327

Invoice for Legal Services Rendered

HOURS	DATE & DESCRIPTION	RATE	AMOUNT
	BALANCE FORWARD		\$78,201.78
0.582	1.14.09 Telcon Fed Ct Clk re: status conf; R&R client e-mails;	\$150.00	\$87.30
	Telcon client re: Appeal process		
0.083	1.15.09 Telcon Client re: Butlin Ltr. Fax same; Copy 1 @ .15	\$50.00	\$4.30
0.083	Telcon with Fed Ct Clk confirming Status Conf Date	\$150.00	\$12.45
0.083	Telcon with Client re: Fed Ct Status Conf Date	\$150.00	\$12.45
0.083	Telcon w/ Client re: Rezone & Fed Ct Status Conf	\$150.00	\$12.45
0.250	1.18.09 Review e-mail & attachment	\$150.00	\$37.50
0.170	1.26.09 Telcon Qwest re: three way telconf set up for 1.28	\$50.00	\$8.50
1.170	Review Corr Sup Ct re: Notice of Opp for Settle. Conf., Draft	\$150.00	\$175.50
	request for Sett Conf, Notice thereof, Fax Cvr & Cvr Ltr to Ct		
	Clerk and Fax Cvr to Opp Counsel		
0.250	Review Fed Ct Response to Obj to Remove & Remand	\$150.00	\$37.50
	Copies 17 @ .15 each + postage \$1.68		\$4.23
0.083	1.27.09 R&R to client e-mail re: Federal Status Conf	\$150.00	\$12.45
	1.28.09 Print minutes of Camas Co Case for Fed Status Conf		
	Copies 7 @ .15 each		\$1.05
2.250	Rev Fed Case File, Conduct Status Conf Hearing & Client Conf	\$150.00	\$337.50
1.000	Download & Copy Mtns for Sum J Pleadings & Exhibits	\$50.00	\$50.00
	Copies: 337 @ .15 each		\$50.55
0.083	E-mail Client	\$150.00	\$12.45
0.670	1.29.09 Review Mtns for Sum J & E-mail client re: same	\$150.00	\$100.50
0.50	E-mail Client Mtns Sum J & Exhibits	\$50.00	\$25.00
SUBTOTAL			\$ 79,183.46
AMOUNT DUE			See Page Three

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Plaintiffs' Attorney Fees & Cost Memorandum -39 pg 703

Plaintiffs' Attorney Fees & Cost Memorandum -40 pg 704

CHRISTOPHER P. SIMMS

ATTORNEY AT LAW

P.O. Box 3123
Ketchum, Idaho 83340
208 622 7878
cpslaw@gmail.com

STATEMENT NO. Feb09GM
DATE February 28, 2009
CLIENT George Martin
FEE \$150 per Hour - Attorney
\$50 per Hour - Paralegal
MATTER Martin v. Smith, et. Al

TO George Martin
RR1 Box 1194
Fairfield, Idaho 83327

Invoice for Legal Services Rendered

HOURS	DATE & DESCRIPTION	RATE	AMOUNT
	BALANCE FORWARD		\$77,676.54
0.333	2.2.09 Client Conference re: Federal Litigation	\$150.00	\$50.00
0.250	Draft Notice for Withdrawal of Motion for Mediation	\$50.00	\$12.50
0.083	Create PDF File; Copies 2 @ .15 each	\$50.00	\$4.45
0.083	File Notice with Federal Court	\$150.00	\$12.45
0.170	2.3.09 Rev Opp Counsel Stay on Appeal; E-mail Client & Rev	\$150.00	\$25.50
	Response		
0.083	2.4.09 Review Ltr from Id. Sup Ct	\$150.00	\$12.45
0.083	Client Conference	\$150.00	\$12.45
0.083	E-mail client copy of Notice Withdraw of Motion for Mediation	\$50.00	\$4.15
5.333	2.5.09 Research & Writing Memo re: Mtn to Remand (fed case)	\$150.00	\$800.00
0.083	2.9.08 Review Ct of Appeals Filing Notice	\$150.00	\$12.45
0.083	Review Sup Ct docs from Opp Coun: Mtn to Suspend Appeal	\$150.00	\$12.45
	& Affidavit of Fitzer in Support Thereof		
9.333	Research & writing reply memo re: remand issue (fed case)	\$150.00	\$1,399.95
	Copies: 56 @ .15 each = \$8.40		\$8.40
1.830	2.10.09 Rev Appeal Notice; Telcon Client; edit memo re: remand	\$150.00	\$274.50
	Rev docs to attach to reply memo; copies 77 @ .15 ea		\$11.55
0.750	Creat PDF files (5) to attach to Memo re: Remand (fed case)	\$50.00	\$37.50
2.830	(fed case) Research & draft resp. to Mtns for Judgmnt & draft	\$150.00	\$424.50
	Mtn to set time to respond		
0.830	2.11.09 Final Edit on Reply Memo Mtn to Remand (fed case)	\$150.00	\$124.50
0.333	Create 2 additonal PDF files for federal case filing	\$50.00	\$16.65
SUBTOTAL			\$ 80,932.94
AMOUNT DUE			See page Two

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Plaintiffs' Attorney Fees : Cost Memorandum - 41 pg 705

CHRISTOPHER P. SIMMS

ATTORNEY AT LAW

P.O. Box 3123
Ketchum, Idaho 83340
208 622 7878
cpslaw@gmail.com

STATEMENT NO. Feb09GM - PAGE 2
DATE February 28, 2009
CLIENT George Martin
FEE \$150 per Hour - Attorney
\$50 per Hour - Paralegal
MATTER Martin v. Smith, et. Al

TO George Martin
RR1 Box 1194
Fairfield, Idaho 83327

Invoice for Legal Services Rendered

HOURS	DATE & DESCRIPTION	RATE	AMOUNT
	BALANCE FORWARD		\$80,932.94
	2.11.09 Copies: 16 @ .15 each; Reply Memo Mtn to Remand		\$2.40
0.750	File Reply Memo & Attachments via ECF Federal Court	\$50.00	\$37.50
0.083	E-mail same to client	\$50.00	\$4.15
0.333	File Notc of Hearing & Plaintiff's Mtn for Order Setting Time to	\$50.00	\$16.65
0.083	Respond to Mtns for Summ Judgment; e-mail client same	\$50.00	\$4.15
0.250	Download & save all electronic filed stamped fed. court docs	\$50.00	\$12.50
0.170	Draft Order RE: Time for Respond Mtn Summary Judgment	\$50.00	\$8.50
0.170	Draft Stipulation for Order Setting Time to Respond (fed case)	\$50.00	\$8.50
0.083	12.16.09 Signed Stip rec'd from Opp Coun; 3 copies @ .15 ea	\$150.00	\$12.90
0.170	Convert Stip to PDF; File electronically with Federal Court	\$50.00	\$8.50
0.083	Download, save & review Mtn to Strike Plaintiff's Reply to Def.'s		
	Response to Plaintiff's Objection to Removal; Copies 8 @ .15 ea	\$50.00	\$13.65
0.083	2.17.09 Draft Order re: Stip of Counsel; copies 2 @ .15 ea	\$50.00	\$4.45
0.170	Create PDF for Order; e-mail to Judge Dale	\$50.00	\$8.50
0.670	Review Mtn for Summ J; Telcon Clk Cv-08-40 re: date for Mtn	\$150.00	\$100.50
	E-mail Fitzer; E-mail Client		
0.500	Draft Stip of Counsel; Notice of Hearing; & Proposed Order for	\$150.00	\$75.00
	Setting Time on Mtns for Summary J (CV-08-40)		
0.083	Telcon with client re: Federal Hearing & CV-08-40	\$150.00	\$12.45
0.170	2.18.09 Draft Ltr to Clk CV-08-40 for filing Notice, Stip & Order	\$50.00	\$8.50
	Copies 20 @ .15 each + postage \$1.68		\$4.68
0.083	Fax same to Atty Fitzer; copy 1	\$50.00	\$4.30
SUBTOTAL			\$ 81,280.72
AMOUNT DUE			See Page Three

Makel check payable to CHRISTOPHER P. SIMMS
THANK YOU FOR YOUR BUSINESS!

Plaintiffs' Attorney Fees: Cost Memorandum - 42 pg 706

Plaintiffs' Attorney Fees & Cost Memorandum - 43 pg 707

CHRISTOPHER P. SIMMS

ATTORNEY AT LAW

P.O. Box 3123
Ketchum, Idaho 83340
208 622 7878
cpslaw@gmail.com

STATEMENT NO. Mar09GM
DATE March 31, 2009
CLIENT George Martin
FEE \$150 per Hour - Attorney
\$50 per Hour - Paralegal
MATTER Martin v. Smith, et. Al

TO George Martin
RR1 Box 1194
Fairfield, Idaho 83327

Invoice for Legal Services Rendered

HOURS	DATE & DESCRIPTION	RATE	AMOUNT
	BALANCE FORWARD		\$81,688.79
0.167	3.2.09 Review File Stamped Stip Order re: Summ J Motions	\$150.00	\$25.05
	3.10.09 Invoice rec'd conference call 1.28.09 (federal ct)		\$45.09
0.083	3.11.09 Amended Notice of Hearing drafted (CV-08-40) with	\$50.00	\$4.15
	corrected County of Jerome, not Camas for hearing 4.13		
0.083	Fax same to Atty Fitzer	\$50.00	\$4.15
0.333	3.12.09 Client Conference re: upcoming Hearing 4/09	\$150.00	\$50.00
0.083	3.13.09 Draft ltr Ct. Clerk Amend. Notc CV-08-40	\$150.00	\$12.45
	Copies: 10 @ .15 each + postage \$1.26		\$2.76
3.250	3.17.09 Telcon client x2; Review file; Review Fed. Ct. Order;	\$150.00	\$487.50
	Copies 19 @ .15 each; Review Butlin & Backstrom Affidavits;		\$2.85
	Draft Mnt for Order Reissue Findings of Fact & Memo of Law		
0.170	E-mail to Atty Fitzer; R&R to his reply	\$150.00	\$25.50
0.670	3.19.09 Edit Mtn for Order Reissue Finding of Fact (CV-07-24)	\$150.00	\$100.50
0.333	Fax Same to Attys Fitzer & Collaer; & Camas County Court	\$50.00	\$16.65
	Hard Copies for Court/file; 62 @ .15 ea = \$9.30 + postage		\$12.24
0.250	Client Meeting; copy of Mnt to Reissue (4 @ .15 ea = .60)	\$150.00	\$38.10
3.333	Legal Research & Writing Resp Mnts for Summ J (CV-08-40)	\$150.00	\$499.95
5.830	3.20.09 Legal R&W Mtns for Sum J; telcons & meeting w/ clt	\$150.00	\$874.50
	Copies 10: Notc of Claims under Tort Act as Attachment Sum J		\$1.50
2.000	3.21.09 Research & outlining of Response to Mtns for Summ J	\$150.00	\$300.00
3.000	3.23.09 Research & outlining of Response to Mtns for Summ J	\$150.00	\$450.00
	(Federal & State CV-08-40)		
SUBTOTAL			\$ 84,641.73
AMOUNT DUE			See Page Two

Make check payable to CHRISTOPHER P. SIMMS
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Plaintiffs Attorney Fees & Cost Memorandum - 44 pg 7.08

CHRISTOPHER P. SIMMS

ATTORNEY AT LAW

P.O. Box 3123
Ketchum, Idaho 83340
208 622 7878
cpslaw@gmail.com

STATEMENT NO. Mar09GM
DATE 3/31/2009 - Page 2
CLIENT George Martin
FEE \$150 per Hour - Attorney
\$50 per Hour - Paralegal
MATTER Martin v. Smith, et. Al

TO George Martin
RR1 Box 1194
Fairfield, Idaho 83327

Invoice for Legal Services Rendered

HOURS	DATE & DESCRIPTION	RATE	AMOUNT
	BALANCE FORWARD		\$84,641.73
3.000	3.23.09 Research/Writing Resp to Mtns for Summ J (08 & Fed)	\$150.00	\$450.00
0.083	3.24.09 Review Id Supreme Ct Order Suspending Appeal	\$150.00	\$12.45
8.916	First Draft State (CV-08-40) Summ Judgment Response	\$150.00	\$1,337.40
0.250	Review Def's Mtns for Summ Judgment (Federal)	\$150.00	\$37.50
3.500	3.25.09 Finish Draft State Resp Mnts for Summ J (CV-08-40)	\$150.00	\$525.00
0.250	Further review of Def's Mtns for Summ J (Federal)	\$150.00	\$37.50
1.830	Legal Research - Mtns Summ J Cts V & VI (Federal)	\$150.00	\$274.50
0.170	Scan Butler Order 11/08 to PDF file; e-mail to Client	\$50.00	\$8.50
	3.26.09 Fee for 1 page doc. Faxed from Camas Co. Ct. Clerk		\$1.50
7.170	3.27.09 Research & draf Resp to Mtns for Summ J (Federal)	\$150.00	\$1,075.50
2.750	3.29.09 Research & draft Resp to Mtns for Summ J (Federal)	\$150.00	\$412.50
11.000	3.30.09 Research & draft Resp to Mtns for Summ J (Federal)	\$150.00	\$1,650.00
0.500	Telcon with Federal Ct Clk re: Notice of Receipt of Order &	\$50.00	\$25.00
	Affidavit of Coun; same drafted; PDF file created & filed in Fed		
	Ct electronically		
0.500	3.31.09 Create affidavit of Martin - to atty for review	\$50.00	\$25.00
0.830	Pull exhibits and exhibit list from prior hearings for Atty rev	\$50.00	\$41.50
11.670	Finalize draft Resp to Mtns for Summ J; Draft Obj to affidavit	\$150.00	\$1,750.50
	and Statements; and Organize exhinitis (08 & Federal)		
0.500	Paralegal proof Obj to Affidavits & Statements of Material	\$50.00	\$25.00
	Facts (State 08 & Federal); Copies to Atty with copies of Defs'		
	corresponding pleadings; copies 57 @ .15 each		\$8.55
SUBTOTAL			\$ 92,339.63
AMOUNT DUE			See Page Three

Make check payable to CHRISTOPHER P. SIMMS
THANK YOU FOR YOUR BUSINESS!

Plaintiffs' Attorney Fees & Cost Memorandum -45 pg 789

ATTORNEY AT LAW

TO George Martin
RR1 Box 1194
Fairfield, Idaho 83327

STATEMENT NO. Mar09GM
DATE 3/31/2009 - Page 3
CLIENT George Martin
FEE \$150 per Hour - Attorney
\$50 per Hour - Paralegal
MATTER Martin v. Smith, et. Al

Invoice for Legal Services Rendered

[illegible]

Makel check payable to CHRISTOPHER P. SIMMS
THANK YOU FOR YOUR BUSINESS!

Plaintiffs' Attorney Fees & Cost Memorandum - 46 pg 710

CHRISTOPHER P. SIMMS

ATTORNEY AT LAW

P.O. Box 3123
Ketchum, Idaho 83340
208 622 7878
cpslaw@gmail.com

STATEMENT NO. Apr09GM
DATE April 30, 2009
CLIENT George Martin
FEE \$150 per Hour - Attorney
\$50 per Hour - Paralegal
MATTER Martin v. Smith, et. Al

TO George Martin
RR1 Box 1194
Fairfield, Idaho 83327

Invoice for Legal Services Rendered

HOURS	DATE & DESCRIPTION	RATE	AMOUNT
	BALANCE FORWARD		\$81,901.42
1.083	4.1.09 Review, Edit & Print Fed Resp to Mtns for Summ J (Fed)	\$150.00	\$162.45
	copies: 11 @ .15 each		\$1.65
0.670	Paralegal proof Resp & Memo in Supp Mtns for Summ J (CV-08)	\$50.00	\$33.50
1.083	Paralegal scan pleading & exhibits create PDF files for Fed Ct	\$50.00	\$54.15
	Printshop Fee: 4 copies of all State (08) pleadings & exhibits		\$27.20
0.830	Paralegal make copies at shop, verify accuracy & package	\$50.00	\$41.50
	Add. copies State Resp Mtns Sum J 88 @ .15 each		\$13.20
	Copies (CV-08) Plaintiffs' Statement of Mat. Facts: 30 @ .15 ea		\$4.50
	Copies of Martin Affidavits (Fed & CV-08): 72 @ .15 each		\$10.80
0.170	Notarize Affidavits of Martin & Rodman	\$50.00	\$8.50
0.083	Create PDF file Martin Affidavit for filing with Federal Court	\$50.00	\$4.15
0.083	Create PDF file Rodman Affidavit for filing with Federal Court	\$50.00	\$4.15
	Copies of Rodman Affidavits (Fed & CV-08): 30 @ .15 each		\$4.50
	Color Copies of Maps & 24 B/W copies: 6 @ .89 ea + 24 @ .15 ea		\$8.94
0.250	Create PDF files of maps for filing with Federal Court	\$50.00	\$12.50
0.500	File Resp Mtns Summ J & exhibits with Federal Court	\$50.00	\$25.00
0.333	Fax pleading to Fitzer; package pleadings/exhibits to Fitzer &	\$150.00	\$50.00
	Judge Butler; US Postage for mailing both packages		\$9.90
6.000	Final editing, review & prep of Responses to Mtns Summ J	\$150.00	\$900.00
	(CV-08-40 & Federal) and client meeting		
0.250	4.2.09 Telcon with Fed Ct Clk x 2 re: light exhibits	\$50.00	\$12.50
	Draft fax cover and fax exhibits		
SUBTOTAL			\$ 83,290.51
AMOUNT DUE			See Page Two

Makel check payable to CHRISTOPHER P. SIMMS

THANK YOU FOR YOUR BUSINESS!

Plaintiffs' Attorney Fees & Cost Memorandum - 47 pg 711

ATTORNEY AT LAW

TO George Martin
RR1 Box 1194
Fairfield, Idaho 83327

MATTER Martin v. Smith, et. Al

Invoice for Legal Services Rendered

SUBTOTAL	\$ 81,976.97
AMOUNT DUE	\$ 81,976.97

THANK YOU FOR YOUR BUSINESS!

Plaintiff's Attorney Fees : Cost Memorandum -48 pg 712

CHRISTOPHER P. SIMMS

ATTORNEY AT LAW

P.O. Box 1861
 Hailey, Idaho 83333
 208.788.2800 tele / 788.2300 fax
cpslaw@gmail.com

STATEMENT NO. May09GM
 DATE May 31, 2009
 CLIENT George Martin
 FEE \$150 per Hour - Attorney
 \$50 per Hour - Paralegal
 MATTER Martin v. Smith, et. Al

TO George Martin
 RR1 Box 1194
 Fairfield, Idaho 83327

Invoice for Legal Services Rendered

HOURS	DATE & DESCRIPTION	RATE	AMOUNT
	BALANCE FORWARD		\$81,976.97
0.250	5.6.09 Review VM Atty Fitzer; Telcon Ct Clerk re: Mtn to Reissue	\$150.00	\$37.50
	Check Idaho Repository re: Butler Decision; VN to Atty Fitzer		
0.250	5.7.09 Telcon client & telcon court clerk	\$150.00	\$37.50
0.170	5.8.09 Review Bulter Decision & VM to client re: same	\$150.00	\$25.50
0.170	Create PDF of Order & e-mail same to client	\$150.00	\$25.50
0.333	Draft Notice of Hearing (Reissue Elgee Order); draft fax cover	\$150.00	\$50.00
	Fax to Opp Attys ; Draft cvr ltr to Ct Clrk w/ notice & copy		
	Copies 12 @ .15 each = \$1.80 + postage \$1.28		\$3.08
0.250	Legal Research; Copies 27 @ .15 each = \$4.05	\$150.00	\$41.10
0.170	5.12.09 Ltr to Client re: Bulter Decision	\$150.00	\$25.50
	Copies 2 @ .15 each + postage .44		\$0.74
0.830	5.18.09 Client Meeting	\$150.00	\$124.50
0.750	5.21.09 Review Cost Memo & Legal Research CV-08-40	\$150.00	\$112.50
0.250	Review Response to Mtn to Reissue CV-07-24	\$150.00	\$37.50
1.250	Draft Objection to Costs & Atty Fees CV-08-40	\$150.00	\$187.50
	Copies: 36 @ .15 each		\$5.40
0.170	5.22.09 Telcon with Client re: Mtn to Reissue CV-07-24	\$150.00	\$25.50
1.000	5.26.09 Prepare & conduct Mtn to Reissue CV-07-24	\$150.00	\$150.00
0.500	Finalize Obj to Atty Fees CV-08-40; draft ltr to clerk; fax atty	\$150.00	\$75.00
	Fitzer; Copies 13 @ .15 each + postage \$1.32		\$3.27
1.500	Initial draft Atty Fees Memo, Mtn for Same & Affidavit in Support	\$150.00	\$225.00
	CV-07-24		
SUBTOTAL			\$ 83,169.56
AMOUNT DUE			See Page Two

Make check payable to CHRISTOPHER P. SIMMS

THANK YOU FOR YOUR BUSINESS!

Plaintiffs' Attorney Fees & Cost Memorandum - 49 pg 713

Plaintiffs Attorney Fees : Cost Memorandum - 50 pg 714

Plaintiffs' Attorney Fees & Cost Memorandum - 51 pg 715

CHRISTOPHER P. SIMMS
Attorney at Law
Pine Street Station Bldg., Ste. 303
400 S. Main Street
P.O. Box 1861
Hailey, Idaho 83333
Tel: 208 788 2800
Fax: 208 788 2300
ISB# 7473

FILED
6-2-09
HR 4:30 P.M.
ROLLIE BENNETT
CLERK OF THE DISTRICT COURT
Baller B. Walker

Attorney for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF CAMAS

GEORGE MARTIN,)
)
Plaintiff,)
)
and)
)
MARTIN CUSTOM)
HOMES, L.L.C.,)
)
Plaintiff,)
)
v.)
)
ED SMITH,)
)
Defendant,)
and)
)
CAMAS COUNTY, IDAHO,)
By and through the duly elected)
Board of Commissioners in)
their official capacities,)
)
)
KEN BAXTROM,)
BILL DAVIS, and)
RON CHAPMAN,)
)
Defendants.)
_____)

Case No. CV-07-24

AFFIDAVIT OF CHRISTOPHER P.
SIMMS IN SUPPORT OF
PLAINTIFFS' MOTION FOR
ATTORNEY FEES & COST

State of Idaho)
) ss.
County of Blaine)

Christopher P. Simms, first being duly sworn, states as follows:

1. This affiant is the attorney with the Simms Law Firm, of Blaine County, Idaho, attorney of record for George Martin and Martin Custom Homes, LLC, and was retained for the purpose of initiating this lawsuit.

2. I am familiar with the files generated in this case and have knowledge of the contents thereof, and make this Affidavit based on my own personal knowledge.

3. The Plaintiffs request a total of \$83,008.39 in attorney fees and costs.

4. I have reviewed the sum identified, detailed and itemized in *Exhibit A* of the Plaintiffs Attorney Fees and Costs Memorandum; the costs are reasonable and necessary, and not extraordinary as associated with this cause of action.

5. I have also reviewed the attorney fees, including paralegal fees, which are also identified, detailed and itemized in *Exhibit A* of the Plaintiffs' Attorney Fees and Costs Memorandum. The monthly invoices in *Exhibit A* list the costs and fees billed by this firm for this action from the initial consultation with Plaintiffs through May 26, 2009. The amount of attorney fees is reasonable under the factors identified in I.R.C.P. 54(e)(3) and accurately reflect the work done, hours consumed, and rate charged by this firm and attorney in pursuit of this cause of action. The fees are reasonable and not extraordinary under I.R.C.P. 54(e)(3) and in support thereof state:

a. *Time and Labor required:* See *Exhibit A* of Plaintiffs' Attorney Fees and Costs Memorandum, a copy of which is attached hereto for quick reference. This case necessitated significant factual investigation and legal research to initiate. Significant

time was necessary to accurately identify the facts and legal issues and litigate the action. The hours and rate reflect the time and labor required to initiate and pursue this cause of action.

b. *Novelty and difficulty of the question:* The legal questions raised by the facts of the matter were unique.

c. *Skill requisite to perform the legal services properly and the experience and ability of the attorney in the particular field of the law:* I was admitted to the Missouri Bar Association in 1990 and practiced law in that State through 2000. I relocated to Idaho and shortly thereafter accepted the position of Executive Director for Citizens for Smart Growth, a citizen advocacy non-profit organization addressing growth issues in Blaine County, with an emphasis on preserving natural assets, rural charm, open space, air and water quality, as well as wildlife habitat, while encouraging economic prosperity and sustainable development. During this tenure I became well versed in land use law, planning, development and governmental entities and actions. I was admitted to the Idaho Bar Association in 2006 and have been actively practicing law in a variety of areas, including land use and planning. In addition to my private client base, past and present, I am the Administrative Hearing Officer for Blaine County, Idaho, and hear applications for conditional use permits within Blaine County. This requires significant understanding of the area of law and policies of the governing agencies. I also have numerous CLE accreditation hours which focus on land use, municipal law and governmental agency authority.

i. Donna Joslyn Simms, Paralegal, for the Simms Law Firm, participated in this cause of action. She is a Magna Cum Laude graduate from the University of

Missouri – St. Louis with a Bachelor of Science in Administration of Justice. Ms. Simms has previously worked for the law firm of Kramer & Frank in St. Louis, Missouri as a paralegal, as well the Missouri Department of Social Service and Department of Corrections, Board of Probation and Parole, as an Investigator and Probation & Parole Officer, respectively. Her education and professional experience qualify her to assist with this matter.

d. *Prevailing charges for like work:* Since my admission to the bars of Missouri and Idaho, I am aware of prevailing fees by other attorneys for similar work, I believe an appropriate hourly fee for work of this nature would be charged at the rate of \$150.00 to \$250.00 per hour. I am charging the Plaintiffs \$150.00 per hour and believe the fee is reasonable considering the depth of understanding needed and time put forth on their behalf.

e. *Whether the fee is fixed or contingent:* The fee arrangement for this cause of action is based on an hourly rate.

f. *The time limitations imposed by the client or the circumstances of the case:* This case presented time limitations.

g. *The amount involved and the results obtained:* There was no amount of money prayed for or involved in this cause, although Plaintiffs' have been harmed financially through the discretionary and arbitrary actions of the Board of Commissioners. The Plaintiffs were found by Order of this Court to be the prevailing party in its Finding of Fact, Conclusion of Law and Order Following Trial dated December 3, 2008.

h. *The undesirability of the case:* All law suits are undesirable, but at times necessary. This cause of action was no more undesirable than any other where an individual takes on an entire county and its political subdivision in the pursuit of justice. The hours and rate charged reflect this.

i. *The nature and length of the professional relationship with the client:* I met the Plaintiffs in my official capacity as Executive Director for Citizens for Smart Growth. Mr. Martin sought my legal services and representation in the fall of 2006. I have been his attorney of record for this matter and all pending related matters since that time.

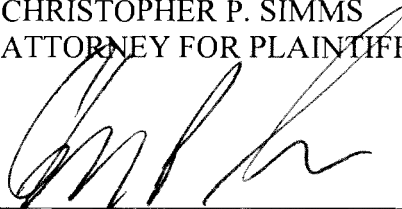
j. *Awards in similar cases:* Based on my experience, the amount sought is consistent with awards of comparable fees in like styled cases.

k. *The reasonable cost of automated legal research:* Automated legal research tools, such as Westlaw, were not employed by this attorney nor his firm. Legal research was conducted through the Idaho Bar Association's Casemaker program. The plaintiffs were charged on an hourly basis for any legal researched performed, which was necessary to accurately formulate legal argument and reference applicable law in the pursuit of this cause of action.

l. *Defendants did not have a reasonable basis in law or fact:* In this Court's Finding of Fact, Conclusion of Law and Order Following Trial, Final Conclusion and Order, number six (6), this Court found Camas County acted without a reasonable basis in fact or law, and plaintiffs could make application for an award of attorney's fees.

Dated this 1 day of JUNE, 2009.

CHRISTOPHER P. SIMMS
ATTORNEY FOR PLAINTIFF

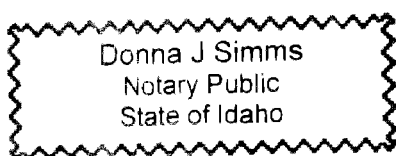


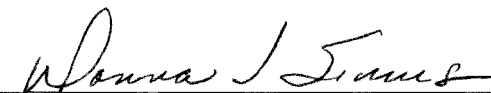
Christopher P. Simms

STATE OF IDAHO)
)
COUNTY OF BLAINE)

On this 1 day of JUNE, 2009, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared Christopher P. Simms, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the date last above written.

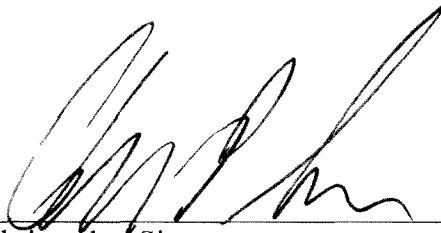




NOTARY PUBLIC
Residing at: Hailey Idaho
My Commission Expires: 10/20/14

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1 day of JUNE 2009, I served a true and correct copy of the foregoing Plaintiff's Reply to Response to Motion for Leave to Amend Petition by delivering same, to Phillip J. Collaer, Attorney for Defendant Ed Smith, 250 South Fifth Street, Ste. 700, P.O. Box 7426, Boise Idaho 83707-7426, and Paul Fitzer, Attorney for Camas County Defendants 950 W. Bannock St., Ste 520, Boise, Idaho 83702.



Christopher Simms

Paul J. Fitzer, ISB 5675
 MOORE SMITH BUXTON & TURCKE, CHTD.
 950 W. Bannock St., Suite 520
 Boise, ID 83702
 Tel: 208/331/1800
 Fax: 208/331/1202

FILED
 6-12-09
 HR 4:08 P.M.
 ROLLIE BENNETT
 CLERK OF THE DISTRICT COURT
Barbara D. Waller

Attorneys for Defendants Camas County and the Individual Commissioners

**IN THE DISTRICT COURT FOR THE FIFTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR CAMAS COUNTY**

GEORGE MARTIN and MARTIN CUSTOM)	
HOMES, LLC,	)	Case No. CV-07-24
)	
Plaintiffs,)	
)	
v.	)	RESPONSE IN OBJECTION TO
	)	MOTION FOR ATTORNEY FEES
	)	AND COSTS PURSUANT TO
ED SMITH and CAMAS COUNTY, IDAHO, by	)	RULE 54(d)(6) AND 54 (e)(6) OF
and through the duly elected Board of	)	THE IDAHO RULES OF CIVIL
Commissioners in their official capacity,	)	PROCEDURE
KEN BACKSTROM, BILL DAVIS, and RON)	
CHAPMAN,)	
)	
Defendants.)	

COMES NOW Defendants Camas County, Idaho (the "County"), by and through its duly elected board of county commissioners, Ken Backstrom, Bill Davis, and Ron Chapman (the Individual Commissioners) and Ed Smith, in his capacity as a member of the Camas County Planning and Zoning Commission (collectively, County Defendants), by and through their attorneys of record, Moore Smith Buxton & Turcke, Chartered, and objects by Motion under Rules 54(d)(6) and 54(e)(6) to the Motion for Attorney Fees and

OBJECTION TO ATTORNEY FEES UNDER RULE 54(e)(6) OF THE IDAHO RULES
 OF CIVIL PROCEDURE – Page 1

pg 723

Costs by Plaintiffs in the above entitled action for and on the following grounds and reasons as set forth herein.

Pursuant to IRCP 54(d)(6) and 54(e)(6) the County objects to certain attorney fees and costs identified in Plaintiff's Attorney Fees and Costs Memorandum. This motion pertains only to Count III as the parties have not, as yet, proceeded to trial on said other counts. Pursuant to Paragraph 26 of Count III of Plaintiff's Petition, Plaintiff sought to enjoin the County's legislation enacted on March 29, 2007 and April 18, 2007 respectively. Thus, the first few pages of Plaintiff Exhibit A pertaining to legal costs and fees that occurred prior to the enactment of said legislation is either beyond the scope of this litigation or more aptly pertain to Counts I and II which do allege activity during this earlier timeline. Thus, the County respectfully requests that these fees and costs be excluded.

Pursuant to Idaho Code §12-117 a court may award attorney fees to the prevailing party only where the court finds that the non-prevailing party acted without a reasonable basis in fact or law. This case involves multiple claims and multiple defenses; many of which are cases of first impression. "A party is not entitled to attorney fees if the issue is one of first impression in Idaho. ... Attorney's fees are also inappropriate if the City presented a legitimate question for this Court to address." *Lane Ranch Partnership v. City of Sun Valley*, 145 Idaho 87, 91, 175 P.3d 776, 780 (2007); See also *Kootenai Medical Ctr. v. Bonner County*, 141 Idaho 7, 10, 105 P.3d 667, 670 (2004). If the answer "was by no means obvious" attorney fees are inappropriate. *Naylor Farms v. Latah County*, 144 Idaho 806, 810, 172 P.3d 1081, 1085 (2007).

As but one example, in this case the Court determined that for purposes of invoking the LLUPA's judicial review provisions (67-6535, 67-6536) in a declarative judgment action challenging the County's legislative activity, the County can serve as the "Applicant". While interesting, this interpretation of LLUPA in a legislative context is the first of its kind. "Here, a legitimate question was presented as to what constitutes an application ...; therefore we deny an award of attorney fees to the County." *IHC Hospitals, Inc. v. Teton County*, 139 Idaho 188, 191-192, 73 P.3d 1198, 1201-02 (2003).

Attorney fees are further not appropriate unless *all* defenses and claims were asserted frivolously or without a reasonable basis in fact or law. *Turbo W. Corpac, Inc.* 119 Idaho 626, 809 P.2d 487 (1991). Where some of the claims or issues are subject to argument, attorney fees are inappropriate. Indeed, the novelty of the issues presented in this cause of action were the subject to several recent Idaho Supreme Court decisions in 2008/2009. The Defendant respectfully asserts that it proceeded with a reasonable basis in fact and law at each stage of these proceedings.

COUNT III
PETITION FOR DECLARATORY JUDGMNET OR IN THE ALTERNATIVE
PETITION FOR JUDICIAL REVIEW

In its Findings of Fact, Conclusions of Law, and Order Following Trial ("Order"), this Court asserted thirty-one different findings of facts, conclusions of law. Throughout its Order, the Court asserts conclusions that it believes are well-grounded in law, but acknowledges other conclusions that are subject to argument and future direction by our Supreme Court. Being open to argument or allowing for differing perspectives means

that there are legitimate questions presented and therefore a reasonable basis in fact and law to present argument.

1. IDAPA: In finding that some of the county's legislation was in fact quasi-judicial in nature thus entitling Plaintiff to assert argument that the County failed to comply with LLUPA's judicial review provisions, the Court found:

"This court will be the first to recognize that, while the distinction between legislative and quasi-judicial activity **has not always been clear**, some of the Idaho Supreme Court's decisions – notably *Highlands* ... - **cast doubt** on whether and under what conditions a court may review quasi-judicial zoning decisions under the Idaho Administrative Procures Act ("IDAPA").

Order, p. 3-4, ¶ 3. Emphasis Added. In its Decision on Requirements of a Transcribable Verbatim Record (Preliminary Injunction I), the Plaintiff asserted and the Court found "[i]n short, the Court rejects the suggestion that the provisions of IDAPA do not apply to Camas County's land use decisions." p. 4.

If it is not clear and there is doubt, is there not a reasonable basis in both fact and law to refute Plaintiff's argument? Further, the County continually asserted that IDAPA does not apply in declaratory judgment actions challenging a county's legislative activity. See *Euclid Ave. Trust v. City of Boise*, 146 Idaho 306, ___, 193 P.3d 853, 855 (2008). Just this week, on June 9, 2009, the Idaho Supreme Court in *Taylor v. Canyon County*, 2009 Opinion No. 83, (2009) unequivocally stated;

Although the Idaho Administrative Procedures Act (IAPA) provides for judicial review of agency actions, this Court has held that a county board of commissioners does not fall within the definition of —agency for purposes of applying IAPA. *Petersen v. Franklin County*, 130 Idaho 176,

182, 938 P.2d 1214, 1220 (1997). —Absent a statute invoking the IAPA's judicial review provisions, [the Board's] actions may not be reviewed under the IAPA. *Gibson v. Ada County Sheriff's Dept.*, 139 Idaho 5, 7–8, 72 P.3d 845, 847–48 (2003). The Local Land Use and Planning Act (LLUPA) authorizes judicial review under the standard set forth in IAPA for some county-level land use decisions; I.C. § 67-6521(d); however, judicial review is limited to situations in which a permit authorizing the development is at issue. *Giltner Dairy*, 145 Idaho at 632–33, 181 P.3d at 1240–41.

Because IAPA pertains to the judicial review proceedings, its provisions do not apply in declaratory judgment actions, which involve different evidentiary standards and a different rule of law. Thus, IDAPA is not applicable to the County unless a specific statute grants a right of judicial review.

2. Declaratory Judgment / Petition for Judicial Review: At the outset of the case, Plaintiff sought both a petition for judicial review (an appellate remedy) and a declarative judgment action (civil remedy), which the County had a reasonable basis in fact and law to defend itself against pursuant to *Euclid Ave. Trust v. City of Boise*, 146 Idaho 306, 193 P.3d 853, (2008). The Court acknowledges this in its Order, (p. 4) but indicates that the case was well under way when *Euclid* was decided. This demonstrates only that Plaintiff's attempt to bring both cause of actions is flatly precluded, not that the County did not have a reasonable basis in fact and law to initially challenge this act. It turned out that the County was right.

3. Quasi-Judicial / Legislative Distinction: In its Order, p. 4, this Court discussed its preliminary injunctions admitting it paid "significant attention" to whether Plaintiff was entitled to appeal the public hearing process and the record the County was required to

maintain. "Camas County clearly engaged in 'quasi-judicial' activity when it held noticed public hearings for the purpose of passing amendments to its Comprehensive Plan, and when it rezoned large portions of the county... ." Order, p. 4. Per *Giltner*, comprehensive planning is not quasi-judicial activity. Per *Burns*, rezoning one property, much less than the whole county is not quasi-judicial activity. If it were, they would be entitled to judicial review which those cases precluded. The County had a reasonable basis in fact and law to challenge the Plaintiff's assertions and the Court's finding that as quasi-judicial activity the county's legislation was subject to the judicial review provisions of LLUPA requiring transcribable records, written findings and other such procedural requirements.

4. Transcribable Record: In Paragraph 3 of its Order, the Court found that a transcribable record is required "regardless of whether an appeal is ... available ..." The County had a reasonable basis in law to contend that §67-6536 is applicable only where "an appeal is provided for". Pursuant to §67-6521 an appeal is another way of saying a petition for judicial review which is only provided for in the issuance or denial of a permit authorizing development. No such finding has been made and in light of the case law in 2008/2009 (*Giltner*, *Highlands*, *Burns*) the County had a reasonable basis to defend itself that a transcribable record was required.

The Court further found that a transcribable record is required not only for the public hearings, but for "deliberations leading up to quasi-judicial public hearings and which the Comprehensive Plan and new zoning were adopted." The County had a reasonable basis in law and fact to defend itself from Plaintiff's challenge that Idaho

Code §67-6536 requires Camas County keep and maintain an adequate transcribable verbatim record during all public workshops, informational sessions, and public meetings that occur prior to the public hearing pertaining to the adoption of a comprehensive plan and zoning ordinances.

It is a case of first impression that all public meetings leading up to a public hearing for the enactment of a comprehensive plan and county-wide zoning ordinance must be recorded in addition to the public hearing as well. The County had a reasonable basis in law to argue that §67-6536 requires a transcribable record only for “public hearings ... regarding a pending application ... or which ... the board deliberates *after* ... compilation of the record.” A record is not compiled until after the public hearing. Thus, what the Court calls “deliberations leading up to quasi-judicial public hearings” is a legitimate question as comprehensive plans and zoning ordinances do not involve a pending application (unless the County is the applicant which is another case of first impression), require a record at a workshops before the public hearing, is not quasi-judicial at all, and is not even a deliberation.

5. Judicial Review Standards Applicable in a Declarative Judgment Action. In paragraph 4, the Court indicates that the “plaintiff clearly indicated at the commencement of trial he was proceeding on the declaratory judgment aspects of the case, and did so by going forward with trial and by presenting evidence and testimony.” Prior to trial however he presented evidence and testimony in seeking preliminary injunctive relief while proceeding on both a petition for judicial review and a declaratory judgment action.

Indeed in its preliminary injunctions, the Court appears to analyze the cases from the standpoint of a petition for judicial review. For example, in Preliminary Injunction I:

- a. "In short, the Court rejects the suggestion that the provisions of IDAPA do not apply to Camas County's land use decisions." IDAPA is not applicable to the County unless a specific statute grants a right of judicial review. *Euclid Ave. Trust v. City of Boise*, 146 Idaho 306, ___, 193 P.3d 853, 855 (2008);
- b. "[A] rezone of large portions of the County ... is quasi-judicial. ... [B]ecause the action ... is quasi-judicial, and thus reviewable, "an appeal is provided for" under I.C. 67-6536, and thus a transcribable verbatim record of certain proceedings is required ..." P. 6. The County reasonably argued that county wide rezones are legislative in nature, are not reviewable, do not provide an appeal, and thus are not required to maintain transcribable verbatim records. See *Burns v. Madison County*.

While the cause of action allegedly proceeded only as a declarative judgment action as the Court maintains, the Plaintiff nonetheless sought to invoke LLUPA's judicial review provisions in this declarative judgment action. The Court declared that while the legislative activity may be exempt from a judicial review proceeding, it is not "exempt from law". Order, p. 6. What law? LLUPA's judicial review provisions? This is a case of first impression as no Idaho court has applied the judicial review provisions outside of a petition for judicial review. Therefore, the County had a reasonable basis in fact and law to defend Plaintiff's assertions.

In order to accept the Camas County's position, one must accept the proposition that if a county acts on a broad enough scale and rezones enough property, it acts in a purely legislative capacity. Thus, if it acts in

a legislative capacity, it is essentially immune from [LLUPA's judicial review provisions]... , and need not keep verbatim records. ... Additionally, under the county's position, its actions are not reviewable.

Order, p. 7 Given the holding in *Burns v. Madison County*, the County's position is reasonable in fact and law insofar as a county-wide zoning ordinance and zoning map is not subject to judicial review, and is therefore not subject to the judicial review provisions of LLUPA such as verbatim records which are only required where an "appeal is provided for". Acknowledging the County's briefing regarding recent Idaho Supreme Court decisions, the Court espouses that "Time will tell". Order, p. 7. If time will tell, this means it is not already told and the County has a reasonable basis to at least argue the point.

6. Mootness. See Order, p. 7. The County had a reasonable basis in fact and law to maintain its position that the enactment of the 2008 legislation renders the sought after remedy: to enjoin the 2007 legislation, moot. "A case is moot if it presents no justiciable controversy and a judicial determination will have no practical effect upon the outcome." *Goodson v. Nez Perce County Board of County Commissioners*, 133 Idaho 851, 853, 993 P.2d 614, 616 (2000).

The capable of repetition yet evading review exception has never been applied in a land use legislative context, but rather in fact specific situations akin to an abortion case where the plaintiff is no longer pregnant when the case comes to trial. Thus it is a matter of first impression to apply this to land use legislation.

The Public interest doctrine by its very nature presents novel and legitimate questions that entitle the court to address as within the public interest. If it were already

well established, and therefore unreasonable in fact and law to present argument thereon, it would not be of such substantial public interest requiring to address an otherwise moot issue. Plaintiff and the Court clearly demonstrate that *there is* a reasonable basis in fact and law to address these issues.

Lastly, The County had a reasonable basis in law and fact to argue the case was moot as Plaintiff must not only demonstrate that he suffered a distinct palpable injury causally connected to the County's alleged arbitrary conduct, pursuant to Article III, he must also demonstrate that the relief sought shall redress or cure this injury. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992). By passing the 2008 legislation which repealed the 2007 legislation, Plaintiff's sought after remedy is merely to enjoin legislation that is already repealed. Such a remedy is merely academic.

7. Standing/Actual Harm: See Order, p. 9. If there is one single argument that the County has vehemently argued more than any other, it is that the Plaintiff never demonstrated that it had the requisite standing to bring its cause of action. The County had a reasonable basis in law and fact to defend itself from Plaintiff's declaratory judgment action as the Plaintiff had not suffered actual harm by virtue of or with a fairly traceable causal connection to the County's legislation. On Page 11 of Preliminary Injunction I, the Court reasoned "Martin need not show that Martin was in any way adversely affected." On page 15, the Court ordered ...

"If the Court were entering final judgment today, this would be the result mandated by law without regard to whether Martin himself has suffered or is suffering irreparable harm, or any harm whatsoever."

The County had a reasonable basis in law and fact to take this issue to trial.

Pursuant to Article III of the United States Constitution:

First, the plaintiff must have suffered an "injury in fact" – an invasion of a legally protected interest which is (a) concrete and particularized, and (b) "actual and imminent", not 'conjectural' or 'hypothetical'; "Second, there must be a causal connection between the injury and the conduct complained of - the injury has to be "fairly ... trace[able] to the challenged action of the defendant, and not ... th[e] result [of] the independent action of some third party not before the court." Third, it must be "likely", as opposed to merely "speculative", that the injury will be "redressed by a favorable decision."

Lujan, 504 U.S. at 560.

All of Plaintiff's properties either remained the same or were upzoned. One one acre lot in a legally vested subdivision permitting R1 densities was mistakenly rezoned A5. As a legally vested 1 acre lot, the property was rezoned to R1 to which this Court took judicial notice thereof. Regardless, the rezone of property in a legally vested subdivision does not alter any development rights of the lot owner. *Miles v. Idaho Power Co.*, 116 Idaho 635, 639, 778 P.2d 757, 761 (1989). Lastly, Increased competition serving as a basis for injury is a matter of first impression in Idaho. A finding of irreparable injury to the citizens of Camas County does not confer standing at all to the Plaintiff.

8. Nexus. On a related note, the County had a reasonable basis in law and fact to challenge whether any harm supposed suffered by Plaintiff has the requisite causal nexus to the an alleged arbitrary act or procedural error committed by the County. Outside of the legal notice issue, it is unclear whether he had a substantial right impaired

or had suffered actual harm *by virtue of* an alleged procedural or substantive error. *Spencer v. Kootenai County*, 145 Idaho 448, 453, 180, 184, P.3d 487, 492 (2008). Any argument that he has been downzoned is limited to the zoning map. There is no such nexus between Plaintiff's alleged harm and a comprehensive plan, land use map, or zoning ordinance.

9. LLUPA Planning Duties. See Order p. 9, ¶7. The Court commented that the County utilized "very little new information" as a basis to enjoin the County's comprehensive plan. Absent a contemporaneous quasi-judicial land use application, no court has ever deemed a plaintiff to have standing to challenge a comprehensive plan. Further, no court has ever substituted its judgment for that of the governmental board where all of the planning components were present in the comprehensive plan. The County had a reasonable basis in fact and law to defend itself from Plaintiff's assertion that he had standing to enjoin the county comprehensive plan on the basis that the county did not conduct any subsequent studies, generate new maps, etc. in amending its comprehensive plan pursuant to Idaho Code §67-6508. The County may reasonably decide an existing comprehensive plan's findings, maps, and other information are still valid without having to revise each planning component anew every time the comprehensive plan is amended; It is the plan itself that must contain each component; that the Plaintiff and even the Court could not substitute its acumen/judgment for that of the elected officials.

10. Written PZ Recommendation is required. In the Court's Order, p. 11, and the Preliminary Injunction, p. 11, the Court provides that a *written* recommendation from Planning Commission (PZ) to the City Council is required. The County acts with a reasonable basis in fact and law to defend itself from Plaintiff's assertion that, pursuant to Idaho Code §67-6509, the county board cannot conduct a public hearing without first receiving a *written* recommendation from the planning commission, other than the written legislation itself. This is a matter of first impression.

11. Record of the Hearings. Idaho Code 67-6509 requires that a "record of the hearings, findings made, and actions taken ... be maintained". The County has a reasonable basis in fact and law to argue that said section does not mandate that such record cannot be satisfied with an audio recording, written minutes, and, most importantly, the legislation itself. It is a matter of first impression to rule as the Plaintiff asserts that this code section requires written evidence in the form of formal findings of fact.

12. Written Findings of Fact, Conclusions of Law. In Paragraph 17 of the Court's Order, p 15-21, the Court, paraphrasing Plaintiff's myriad of arguments in this regard, finds that because the county has

taken evidence and testimony in the exercise of a quasi-judicial function ... due process considerations apply ... [and] the county must make written findings of fact and conclusions of law. ... Whether the county is acting on a particular application or on its own recommendation from its P&Z affects whether a party might be able to seek judicial review, but it does not affect the requirements imposed by statutes and case law as to whether the county must make written findings and conclusions.

Order, p. 16-17. Finding that Idaho Code §67-6535 is applicable to legislative activity irrespective of the ability of a Plaintiff to be eligible to bring a petition of judicial review is a case of first impression. The County has a reasonable basis to argue that such legislative activity is not an "application" as no court has ever ruled that the County itself serves as the quasi-judicial applicant in a legislative enactment. As the Court characterized it...

Whether the Supreme Court has intended to do away with requirements that counties enter findings of fact and conclusions of law following quasi-judicial zoning hearings in cases that do not involve specific "applicants" *remains to be seen.*

Order, p. 19. Emphasis added.

The Court indicates that it is "not so sure" concerning the County's interpretation of recent case law.

To this court, it appears that zoning decisions ... are quasi-judicial agency functions, in which the public is given notice and an opportunity to be heard As such, it still appears that [IDAPA] governs the review of zoning decisions.

The Court however acknowledged: "[t]here is, unfortunately, language in *Giltner Dairy* that could be interpreted to mean that IDAPA does not apply at all to zoning decisions."

The key word here, however, is "interpretation". If there is such equivocal language in these cases to lead to such differing interpretations, then it is inappropriate to award attorney fees against one party declaring that that party had no reasonable basis in law or fact to argue the point of law.

LLUPA, in general, is far from providing perfectly clear guidance and where, as here, we have a number of statutory provisions which may or may not be applicable to

certain government activities, there is a reasonable basis in law to litigate these issues and attorney fees are unwarranted. Perhaps the Court is correct and *Giltner* and *Highlands* only serve to clarify when a right of appeal is available. Perhaps every property owner in the county can be classified as an affected party in a quasi-judicial adoption of a zoning map. There has never been such a finding pertaining to a county-wide zoning map, comprehensive plan, and zoning ordinance. These are issues of first impression which may not be fully explained in the Supreme Court's latest guidance. "Whether *Giltner* ... and *Highlands* .. are intended to overturn all aspects of cases such as *Evans* ..., *Price*..., and *Comer* ... is anyone's guess." Order, p. 19. Emphasis added. The Court's characterizations at least demonstrate that it is reasonable in fact and law to present the arguments.

Lastly, the Court determined that a rezone application is quasi-judicial activity citing *Jerome County v. Holloway*. The County argued that a county-wide rezone is legislative. The County had a reasonable basis in fact or law given the recent holding in *Burns v. Madison County*.

13. Conflict of Interest. The County had a reasonable basis in law and fact to defend itself from Plaintiff's assertion that it has the requisite standing to enjoin the County's comprehensive plan, zoning ordinance, and county-wide zoning map based upon a perceived government official's conflict of interest by virtue of his ownership of property in the county. While the Court can "find no exception in law" for legislative as opposed to quasi-judicial activity, this is a matter of first impression as *Manookian v. Blaine County*, 112 Idaho 697, 735 P.2d 1008 (1987), the seminal case on conflicts as

well as all other precedent was quasi-judicial in nature. No court has ever deemed a county official to have a conflict of interest in the adoption of a comprehensive plan, land use map, or zoning ordinance.

14. Planning and Zoning Commission Lacked Jurisdiction. The Court dismissed this action against the County as the Camas County Planning and Zoning Commission was properly enacted via Ordinance 11 on May 10, 1976. Thus the County is the prevailing party and had a reasonable basis in fact and law to defend itself from Plaintiff's claim.

15. Alleged Procedural Defects. The County had a reasonable basis in fact and law to defend itself from Plaintiff's myriad of allegations pertaining to procedural defects including publication, posting, hearing, summaries, and other such procedural due process defects. Where Plaintiff had actual notice and a meaningful opportunity to be heard at each and every public hearing and did so, the Plaintiff is precluded from challenging notice for the benefit of the general public. *Spencer v. Kootenai County*, 145 Idaho 448, 453, 180, 184, P.3d 487, 492 (2008). Plaintiff testified at each and every public hearing. Actual notice trumps any challenge to defective notice. See *Cowan*, 143 Idaho at 513, 148 P.3d at 1259.

16. In Accordance with the Comprehensive Plan. The County had a reasonable basis in fact and law to defend itself from Plaintiff's assertion that he has standing based upon his assertion that the County did not consider a *written* recommendation nor generate *written* findings in determining that the zoning ordinance and map were adopted

in accordance with the comprehensive plan, which was adopted prior to but essentially contemporaneously with the Zoning Ordinance. There is no such requirement in LLUPA.

17. Material Changes requiring subsequent public hearings: The County had a reasonable basis in law and fact to defend itself from Plaintiff's assertion that the failure to record all prior meetings prior to the public hearing renders it, as the court determined, impossible to tell if there were any changes to the comprehensive plan, land use map, zoning ordinance, and zoning map that occurred *prior* to the public hearing thereby justifying its injunction. There is no evidence to suggest that any material changes were made after the Board conducted the public hearings; all of which were recorded as were the deliberations thereof.

18. Legal Notice to the General Public: The County had a reasonable basis in fact and law to defend Plaintiff's assertion and finding by the Court that the county did not adequately provide sufficient notice to the general public (as opposed to actual notice to the Plaintiff) and therefore the Plaintiff is empowered to bring an action on behalf of the general public who possibly did not have a meaningful opportunity to be heard; that the plaintiff's actual notice is no defense and the county is held to a higher due process standard than that afforded to affected persons in a judicial review context.

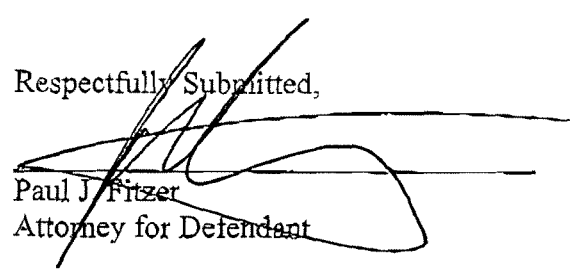
WHEREFORE, for the foregoing reasons, the County respectfully requests that this Court deny Plaintiff's Motion for Attorney Fees and Costs.

OBJECTION TO ATTORNEY FEES UNDER RULE 54(e)(6) OF THE IDAHO RULES OF CIVIL PROCEDURE – Page 17

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DATED this 12th day of June, 2009.

Respectfully Submitted,



Paul J. Fitzer
Attorney for Defendant

CERTIFICATE OF SERVICE

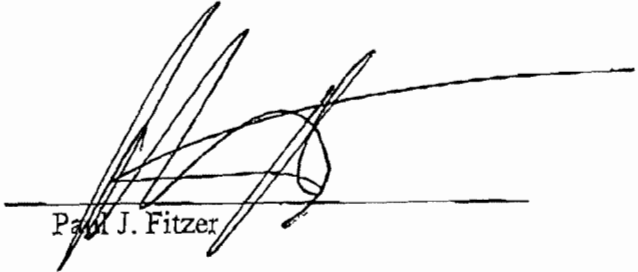
I hereby certify that a true and correct copy of the foregoing Objection to Attorney Fees was this 12 day of June, 2009 served upon the following individuals and in the corresponding manner:

Christopher P. Simms
P.O. Box 1861
Hailey ID 83333

Via United States mail

Hon. Robert Elgee
Blaine County Courthouse (resident chambers)
202 S. Second Ave. S, Suite 110
Hailey, ID 83333

Via United States mail



Paul J. Fitzer

FILED
10-8-09
HR 11:45 AM.
ROLLIE BENNETT
CLERK OF THE DISTRICT COURT
Batler D. Waller

**IN THE DISTRICT COURT FOR THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR CAMAS COUNTY**

GEORGE MARTIN,)	
)	
Plaintiff,	)	Case No.: CV-2007-0024
)	
and)	
)	
MARTIN CUSTOM HOMES, LLC,)	
	)	MEMORANDUM DECISION ON
vs.	)	ATTORNEY'S FEES AND COSTS
)	
ED SMITH,)	
)	
Defendant)	
)	
and)	
)	
CAMAS COUNTY, IDAHO, By and through)	
the duly elected Board of Commissioners in)	
their official capacities,)	
)	
KEN BACKSTROM,)	
BILL DAVIS, and)	
RON CHAPMAN,)	
)	
Defendants.)	
)	

PROCEDURAL HISTORY AND RELATED ISSUES

This case has had a long and twisted procedural history, complicated by new decisions of the Idaho Supreme Court as it has progressed. The action commenced with a filing on May 4, 2007. Plaintiffs George Martin and Martin Custom Homes, LLC

(hereinafter "Martin") commenced suit against Ed Smith, one of the Camas County Planning and Zoning Commissioners, for breach of contract and breach of fiduciary duties. Count III of the complaint against Camas County alleged a petition for declaratory judgment, or in the alternative, a petition for judicial review. An Amended Petition was filed on December 13, 2007. At the time of these filings, there was no prohibition against mixing claims for judicial review with a declaratory judgment action or claims for other relief. That did not come until the Idaho Supreme Court decided *Euclid Avenue Trust v. City of Boise*, 146 Idaho 306, 193 P.3d 853 on Sept. 23, 2008. Martin has been represented throughout by Christopher Simms of Ketchum, and Camas County has been represented by Moore, Smith, Buxton and Turcke, Chtd., of Boise.

Martin took issue with adoption of a specific Camas County ordinance which effected a rezone of approximately one-third of Camas County, an area comprising approximately 10,000 to 20,000 acres. Martin filed applications for temporary restraining orders and preliminary injunctions alleging the Camas County Planning and Zoning commission was unlawfully constituted, that Camas County had failed to maintain a reviewable record during public hearings, that Camas County had provided inadequate notice of hearing before adopting a specific ordinance, and that members of the P&Z Commission and the Board of Commissioners had acted with unlawful conflicts of interest when they participated in decisions effecting a wholesale rezone of a large portion of Camas County.

These applications for injunctive relief were broken into at least three separate proceedings. The court denied the application regarding the unlawful constitution of the P&Z Commission and denied another application regarding the alleged destruction of

public records. On December 28, 2007 this court entered a Decision on Requirements of a Transcribable Verbatim Record and granted Martin relief prohibiting Camas County from proceeding under the March 2007 ordinance until further order of the court. On April 2, 2008, that order was followed by another order issuing a second injunction concluding that, for purposes of a preliminary injunction only, conflicts of interest existed at both the Planning and Zoning and County Commissioner level which would likely render Camas County's passage of the March 2007 zoning amendments illegal and without further force and effect. In reaching this determination, the court noted that the evidence in this regard would not likely change at trial, as it had come from the county's own employees. The court further noted: "*If the Court were entering final judgment today, this would be the result mandated by law without regard to whether Martin himself has suffered or is suffering irreparable harm, or any harm whatsoever.*"

On March 27, 2008, the Idaho Supreme Court decided in *Giltner Dairy v. Jerome County*, 145 Idaho 630, 181 P.3d 1238, that the Idaho Administrative Procedures Act, I.C. §§67-521 *et seq.*, afforded no right of judicial review, and that for there to be judicial review of a land use planning decision under I.C. § 67-6519 there must be an application for a permit. Martin was not denied a permit, but has challenged the action of Camas County arguing that he has been affected by a rezone. He has also combined his request for judicial review with a petition for declaratory judgment.

The Idaho Supreme Court reaffirmed their position in *Giltner Dairy* in *Highlands Development Corporation v. City of Boise*, 145 Idaho 958, 188 P.3d 900 filed June 18, 2008, determining that since no statute authorized judicial review the appeal should be dismissed, raising the issue of *Giltner Dairy* on its own. *Highlands Development*

involved Boise City's annexation and zoning of properties in conjunction with the annexation. This decision sparked a dissent from two members of the Supreme Court who argued that "The Court's opinion would exclude judicial review for zoning decisions, based on the fact that those are not specifically called permits in LLUPA." According to the dissent, this decision would effectively foreclose review of quasi-judicial zoning decisions under the Idaho Administrative Procedures Act, I.C. §§67-5201-5292. This issue was one of the early issues this court struggled with in determining the applicability of the APA to this case, and whether the first preliminary injunction should issue.

Of special note is the issue of standing.¹ The dissent in *Highlands Development* points out that the primary provision of LLUPA pertaining to judicial review is I.C. § 67-6521, which allows an "affected person aggrieved by a decision to seek judicial review." An affected person is defined as one having an interest in real property which may be adversely affected by the issuance or denial of a permit authorizing the development. 145 Idaho at 963. Here, of course, in addition to Martin, there may be hundreds of people

¹ This court embarks on this course of review for three reasons. The first is that this court is presently passing on questions involving the County's actions pursuant to I.C. § 12-117 for purposes of determining if a fee award is proper, and if so how much. Standing relates to arguments the County has raised in response to Martin's request for attorney fees. The second is to show how these new decisions from the Idaho Supreme Court may have affected Martin's ability to proceed and how his standing may have been changed or affected by ongoing decisions. The third is to suggest that since the Supreme Court has greatly reduced the ability of citizens to seek *judicial review* by their decisions in this area, unless they broadly view "standing", citizens like Martin may be left with no avenue to redress serious alleged grievances such as conflicts of interest. This court understands the concept of a standing requirement in order to claim aggrieved status as a landowner affected by another's permit, as in the case of judicial review. It also understands the concept of standing in the area of rezoning. Both of these generally require an affect on one's land or property interest, which is often determined by an owner's proximity to the property whose status has changed. However, a conflict of interest from a county official affects all citizens of the county, regardless of whether they own property. Cases involving conflicts of interest should not be divided into categories such that only the "landed gentry", or the particular landed gentry in close proximity to the alleged "conflict" rezoned are able to bring a declaratory judgment action determining an ordinance void. A conflict of interest affects all, or it affects none. If Camas County is successful in challenging Martin's standing, it will mean that Camas County has succeeded in making any and all of their actions rezoning approximately 20,000 acres in this case unreviewable.

affected by the decision of the County to enact a massive rezone of the County. However, because no one in particular has been granted or denied a permit, Camas County's actions likely are not reviewable by way of a judicial review proceeding. Some will argue that the implications of these rulings might not mean much, because there are those who assert that the County's actions are always reviewable by way of a declaratory judgment action. *However, the definition of an aggrieved party contained in LLUPA, and the definition of who has standing to seek a declaratory judgment action are not necessarily the same.* See, *Ameritel Inns, Inc. v. Greater Boise Auditorium District*, 141 Idaho 849, 852, 119 P.3d 624, 627 (2005). This is of real concern to Martin, as the rules regarding who may bring a judicial review proceeding have been changing as this case has progressed. Nor is this idle speculation as to whether these changes in the legal landscape will affect him.²

On June 9, 2009 the Idaho Supreme Court decided *Taylor v. Canyon County*, Docket No. 34809, 2009 Opinion No. 83. The Court there observed that although the Vickers were correct that the Board bypassed at least two stages of due process requirements under I.C. §67-6509 in amending the 2010 Plan Map, they have failed to point to a statute authorizing judicial review of the Board's amendment. Further, because LLUPA does not provide an independent statutory basis for the Court to review the

² Indeed, after this court determined that the March 2007 ordinance was invalid, Camas County passed a new ordinance, which Martin also challenged in Camas County case number 2008-40. This case was assigned to the Honorable John Butler. Judge Butler ruled in at least one hearing that, at least as to Martin's then existing circumstances, Martin failed to make a sufficient showing of direct injury to himself as a result of the enactment of the 2008 comprehensive plan and zoning ordinance. See, *Memorandum Decision and Order Re: Application for Temporary Restraining Order and/or Preliminary Injunction*. That case, as well as this case have both been appealed to the Idaho Supreme Court. The Idaho Supreme Court has stayed all proceedings in this action while they determine the issues in Judge Butler's matter first. It would not be unreasonable to conclude the reason for that is to determine Martin's standing before proceeding further.

Board's amendment, "we may not review the Vickers' procedural due process violation claim related to the same" and neither could the district court. The Court did determine that, at least in that case under Canyon County's ordinances, the granting of a conditional rezone and corresponding development agreement is the functional equivalent of a conditional use permit, which is a special use permit, and thus the Court was statutorily authorized to review that portion of the Board's actions.

On July 9, 2009, the Idaho Supreme Court decided *Burns Holdings, LLC, v. Madison County Board of Commissioners*, an amended opinion, Docket No.33753, 2009 Opinion No. 65 again determining that no statute authorized judicial review despite the claims of both parties that the action was subject to judicial review. *Burns Holdings* involved a rezone application, but the Supreme Court reaffirmed their earlier determinations, stating that: "An application for a zoning change, like a request for an amendment to a comprehensive plan, is not an application for a 'permit', and thus no review is authorized under the LLUPA." *Id.*³

Of course, all of these recent cases precluding judicial review have been decided since Mr. Martin embarked on this litigation over two years ago. *Burns Holdings* did, however, reiterate an earlier statement in *Burt v. City of Idaho Falls*, 105 Idaho 65, 66, 665 P.2d 1075, 1076 n.2 (1983): "While we hold that a legislative zoning decision is not subject to direct judicial review, *it nonetheless may be scrutinized by means of collateral actions such as declaratory actions.*" *Id.* (emphasis added). This is precisely where we

³ *Burns Holdings* likewise provoked a vigorous dissent, pointing out that "this Court consistently held for over a quarter of a century that LLUPA authorized judicial review of county zoning decisions under either I.C. § 67-6519 or Idaho Code § 67-6521." *Id.* Further down, the dissent points out that: "Today, the Court expands the *Highlands* decision to preclude judicial review of any zoning decision under LLUPA." *Id.*

are in this case. *Of course, the availability of a declaratory action depends on whether one is determined by a court to have standing to pursue it.*

Following trial, on approximately December 3, 2008, this court entered its Findings of Fact, Conclusions of Law, and Order Following Trial. In its decision, this court determined that Martin was entitled to the relief he sought as a declaratory judgment action, and that Camas County proceeded without a reasonable basis in fact or in law, and Martin could apply for an award of attorney fees. Camas County has appealed, and, as noted, the Supreme Court has issued a stay of proceedings in this action pending resolution of a decision by the Honorable John Butler.⁴

ISSUES PRESENTED

(1) Whether Martin's request for attorney's fees is untimely.

(2) Whether and to what extent I.C. §12-121 governs an award of fees in this action.

(2) Whether and to what extent Martin is entitled to an award of attorney's fees against Camas County pursuant to I.C. § 12-117.

(1) Is Martin's request for fees untimely?

Camas County objects to Martin's request for fees as untimely, pointing out that the court's Findings of Fact, Conclusions of Law, and Order were filed on December 2 or 3, 2008, and Martin's memorandum of costs was not filed until December 22, 2008. This

⁴ Judge Butler's action, though filed later than the present action, concluded much earlier.

would be beyond the 14 day limit set by I.R.C.P. 54(d)(5). *Camp v. Jiminez*, 107 Idaho 878, 693 P.2d 1080 (App.1984) provides that a district court, in its discretion, may extend the time for filing a memorandum of costs under this rule.

In their Objection to Attorney's Fees filed December 29, 2008, Camas County's first objection is that this court lacks jurisdiction to even consider a request for fees, arguing that all state law claims had been removed to federal court by virtue of Camas County's Notice of Removal filed November 10, 2008. It should be noted that trial in this action was held August 20, 2008, followed by briefing, and Martin's motions for the court to entertain amendments to his complaint. Claims Martin had previously made in his original and amended complaints for money damages had been bifurcated from the judicial review or declaratory judgment portions of this action, and were to be taken up after the August trial. Indeed, Mr. Collaer, counsel for some of the individual defendants, had been excused from the judicial review/declaratory judgment portion of proceedings.

In the interim, between the trial and the time this court entered its decision, one of the requests Martin made was *to prospectively* amend his complaint for money damages to add claims that invoked federal jurisdiction, relief this court granted *before* it completed its ruling after trial. Camas County seized upon this opportunity, *after trial but before the court issued its decision*, to attempt removal of the whole cause of action to federal court. In this court's view, the addition of federal claims had no effect on this court's ability to issue its decision in state court, as the amendments to the complaint were not to be considered or presented until after this court entered its trial findings. Indeed, this court had even indicated earlier to the parties that, in view of the bifurcation of issues, the forthcoming post-trial decision from this court would be separately

appealable. (Camas County appears to have approved this process, as an appeal followed.) Nevertheless, this court entered its decision after Camas County arguably “removed” the entire action to federal court. Notably, there was some argument before the federal court as to whether this was proper. Understandably, there must have been some doubt in Martin’s counsel’s mind about whether Martin could even file for attorney’s fees in state court, if the action had been “removed”, or whether, given time limits in state court proceedings, he should file anyway. This court had the same problem.

The federal court issued a decision filed March 17, 2009, remanding the matter back to state court. Thereafter, on motion of Martin, and to avoid uncertainty over whether this court should have filed its Findings of Fact and Conclusions of Law back in December, this court re-entered the same. Premature filing of Martins’s memorandum of fees and costs does not render it subject to being stricken. *Crowley v. Lafayette Life Insurance Co.*, 106 Idaho 818, 683 P.2d 854 (1984). After this court re-entered its Findings and Conclusions, Martin filed Plaintiff’s Attorney Fees and Cost Memorandum on approximately June 3, 2009. When the attorney’s fee issue came before the court for oral argument on July 22, 2009, no (renewed) argument was made by Camas County as to whether Martins’ filing back in December was untimely, or for that matter, that the new filings in June of 2009 lacked sufficient detail to allow objection.

Under these circumstances, this court will either expand the time for filing of Martin’s memorandum of costs until December 22, 2008, or will determine, alternatively, that the memorandum was timely filed in view of the Notice of Removal in November, 2008, followed by this court’s re-entry of its Findings and Conclusions, etc after the

federal court's remand in March of 2009. Either way, Camas County's objection to the timeliness of Martin's memorandum is denied.

(2) Is Martin's request for fees governed by I.C. § 12-121 or I.C. § 12-117?

This court already determined in its Findings of Fact and Conclusions of Law that Martin was the prevailing party and was entitled to apply for attorney fees pursuant to I.C. §12-117. In their briefs and at oral argument Camas County has gone to great lengths to argue that their actions *in defending against* Martin's claims were not frivolous, unreasonable, or without foundation. At oral argument, the court conceded that if that was the standard to be used, the County's position would be well-taken. That, rather clearly, is the standard to be applied under a §12-121 analysis. Attorney fees are not appropriate under I.C. §12-121 unless all claims brought or all defenses asserted are frivolous and without foundation. *Management Catalysts v. Turbo W. Corpac, Inc.*, 119 Idaho 626, 809 P.2d 487 (1991). However, an analysis under I.C. §12-117 is different. "Under I.C. §12-117, the court 'shall' award attorney's fees where the state agency 'acted' without a reasonable basis in fact or law. The prior decisions of this court concerning the application of this statute make it clear that is the *overall action of the agency*, not just preliminary matters, on which the statute focuses." (emphasis added) *Rincover v. State Dept. of Finance*, 129 Idaho 442, 926 P.2d 626 (1996). Lest there be some argument here that Camas County is not a "state agency" for purposes of I.C. §12-117, the statute applies equally to state agencies, cities, counties, or other taxing districts. The court concludes I.C. §12-121 has no applicability here. Furthermore, the court

concludes that under a §12-117 analysis, it is the *actions of the county, not the actions of their attorneys in defending the action*, that are subject to scrutiny.

(3) Whether and to what extent Martin is entitled to an award of fees pursuant to Idaho Code §12-117.

This court determined in its Findings of Fact, Conclusions of Law, and Order Following Trial of December 2008 that, among other things, Camas County had commenced deliberations after receipt of recommendations from the County Planning and Zoning Commission, but prior to public hearings. In addition, no one knows exactly what recommendation the Board of Commissioners received from the P&Z, and no one knows when it was received.

The court also found that while large portions of the County's activities may be legislative, and no longer subject to judicial review (which turned out to be the case), they were not exempt from legal requirements, and their actions were subject to review by way of declaratory judgment.

This court concluded Martin had standing. In addition to the comments made by the court above, the court makes the following observations regarding standing. In its December 2008 Findings and Conclusions this court noted, at page 7, the County's position that comprehensive plans, land use maps, zoning ordinances, and zoning maps rezoning property are no longer subject to the statutory review procedures of LLUPA, noting that "Time will tell." Since that was written, those things have come to pass. Camas County has been the beneficiary of several rulings significantly narrowing the

scope of judicial review. As noted above, if they are successful in arguing Martin lacks standing, they will have evaded all review. In fact, the County's position goes beyond that. Counsel for the County submitted at oral argument that if a person made it to the appropriate hearing to present their case to the appropriate body, that would be all the procedural due process they were entitled to. All else, in the County's view, such as proper notice and appropriate findings and conclusions can apparently be dispensed with.

The Supreme Court has not eliminated due process. All they have done is restrict statutory judicial review. They have not changed any statutory or other requirements the County is to follow, or should have followed, in order to observe the rights of its citizens. In this court's view, whatever the rules may be regarding "standing" in the context of declaratory judgments, there needs to be room for citizens to object to what are allegedly wrongful activities of their governing bodies. If a commissioner in any county anywhere acts with a conflict of interest, that activity should be able to be challenged by anyone with the willingness and ability to do so. Courts should not look for reasons to exclude that challenger from the process. A conflict of interest affects every person in the county, not just landowners. The concept of "standing", when examining the issue of conflicts of interest, cannot be confined or restricted to those who own property.

In this case, this court found in its decision regarding the conflicts of interest issue that Camas County *passed a zoning ordinance rezoning large portions of Camas County*, that such activity was not "legislative" in nature, and that more than one conflict of interest existed. This court further determined that Martin did not need to prove harm in any respect whatsoever in order to assert that challenge, nor did Martin have to (as asserted by Camas County) prove that a change in zoning was motivated by, or resulted

in, a direct pecuniary benefit to a party with a conflict of interest, nor did he have to prove (as asserted by Camas County) this activity had to adversely affect Martin. There is no support in the law for those arguments.

Finally, on this point, this court is aware an argument can be made under I.C. § 67-6506 (the applicable conflict of interest statute) that in the event of a knowing violation the statute carries its own remedy—the violator can be prosecuted criminally. The court has two responses to this. The first is that, whatever might be the situation in other counties where the prosecutor is independently elected and arguably immune from activities of the County Commissioners, such is not the case in Camas County. The Camas County prosecutor, an elected prosecutor in another county, serves by virtue of a contract with the Camas County Commissioners. While this court has great respect for the prosecutor, he can hardly be expected to bite the hand that feeds him. Any other prosecutor to be appointed to consider prosecution of such a case would have to be paid by Camas County—the very Board of Commissioners he would be asked to prosecute. In the court's view, that alternative does not seem like much of a remedy. The second response is that Camas County's counsel argued at oral argument that even if one who acted with a conflict is "subject to criminal prosecution, it doesn't actually undo the legislation." Exactly. That is why Martin sought this declaratory judgment—to determine the ordinance passed with conflicts of interests was declared void.

Turning to the other findings and conclusion made by the court after trial, the court found that the County apparently rezoned an area of the County from Ag to Ag Tran in March of 2007 without any recommendation from the P&Z. Findings 10, ¶ 9. The court also found there is no written record that Camas County ever prepared and sent

to the Board any written recommendation for a rezone or an amendment to the Comprehensive Plan that the Board could either accept or reject. Findings 11, ¶ 11. Nor did the Camas P&Z make any recommendations as to changes in the Comprehensive Plan. Findings 11, ¶ 12 and 14, ¶ 16. Therefore, there is no record maintained by Camas County as required by I.C. § 67-6509(a) of the hearings, findings made, and actions taken by the commission. Because there was no record of the recommendations received, the court found the county could not properly give notice of a public hearing containing a P&Z recommendation, nor could the county *adopt a proposed plan*. There wasn't one. *See*, pg. 13 of the court's December 2008 Findings and Conclusions.

At page 16 *et seq.* of the court's Findings and Conclusions the court engaged in a review of Camas County's general assertions that, since judicial review had been severely restricted, Camas County was excused from providing any formal written record of its decision adopting Ordinance 150 or 153. Camas County stipulated it did not do so. Findings 15, ¶ 17. The court found that since the Board had taken evidence and testimony in the exercise of a quasi-judicial function, findings of fact and conclusions of law were required *as an element of due process*, quoting from *Chambers v. Kootenai County Board of Commissioners*, 125 Idaho 115 (1994).

The court concluded at para. 19 that the legal notice published before the hearings on May 17-22, 2007 failed to contain the P&Z recommendation required by I.C. § 67-6509(a), that the Board made material changes to the Comprehensive Plan Land Use Map, and failed to provide further notice and hearing required by I.C. § 67-6509(b). Legal notices did not contain a summary of the plan to be discussed. Para 21. The legal notice for the March 14, 2007 hearing failed to include the P&Z recommendation. Para

22. The Board amended the Comp Plan for the northern half of the county without any input from P&Z, and without any public hearings or recommendations from P&Z. para 23.

At oral argument, Camas County raised one additional argument that must be addressed. Counsel for Camas County cited *Rammell v. Idaho State Dept. of Agriculture*, Idaho Supreme Court 2009 Opinion No. 78, Docket 34927 filed June 1, 2009, for the proposition that Martin's counsel could not claim attorney's fees for any portion of the administrative activity that went on in this case. This court agrees. *Rammell* holds that there is no statutory basis for a court to award attorney fees incurred during an administrative proceeding.

For the foregoing reasons, this court again concludes Camas County has acted without a reasonable basis in fact or law. The County did so more than once, and in more than one area, and at more than one time. The purpose of Idaho Code §12-117 is to serve as a deterrent to groundless or arbitrary action and to provide a remedy for persons who have borne unfair and unjustified burdens defending against groundless charges or attempting to correct mistakes agencies should never have made. *Spencer v. Kootenai County*, 145 Idaho 448, 180 P.3d 487 (2007).

Other than as noted above with regard to the *Rammell* decision, Camas County has made no specific objection to any part of the fees or costs requested by Martin's counsel. The court has thoroughly reviewed Mr. Simm's fees and billings attached to Plaintiff's Attorney Fees and Cost Memorandum dated June 1, 2009. The hourly rate

charged of \$150 per hour is more than reasonable.⁵ The calculation of reasonable attorney fees is discretionary. *See, Parsons v. Mut. of Enumclaw Ins. Co.*, 143 Idaho 743, 747, 152 P.3d 614, 618 (2007) . When awarding attorney's fees, a district court must consider the applicable factors set forth in I.R.C. P. 54(e)(3) and may consider any other factor that the court deems appropriate. Though it is not necessary the court address all of the I.R.C.P. 54(e)(3) factors in writing, the record must clearly indicate the court considered all the factors. *Lee v. Nickerson*, 146 Idaho 5, 189 P.3d 467 (2008). When a court awards attorney fees pursuant to I.C. § 12-121 it must make a written finding as to the basis and reasons for awarding the attorney fees. I.R.C.P. 54(e)(2). There is no similar requirement for attorney fee awards pursuant to Idaho Code §12-120(3). Rather, the law is clearly settled that when awarding attorney fees in a civil action, the district court must consider the I.R.C.P. factors, but need not make specific written findings on the various factors. *Id.* Here, the court has made specific written findings in both its Findings of Fact and Conclusions of Law, and in this decision as to the basis and reasons why Martin is entitled to an award of fees and why, in this court's opinion, Camas County has acted without a reasonable basis in fact or law.

This court has thoroughly reviewed all of the factors enumerated in I.R.C.P. 54(e)(3) (A) through (L). The primary factors in this case are (A) the time and labor required and (B) the amount involved and the results obtained. The novelty and difficulty of the questions involved cuts both ways—the statutes setting forth the requirements the county must follow in land use matters are not that involved, however, the defenses

⁵ For a comparison, consider the attorney fees and rates approved by the court recently in another Blaine County matter, *Home Media, Inc., v. Argyros*, Blaine County case no. 05-0684, *Memorandum Decision and Order Re: Attorney Fees and Costs* filed Sept. 4, 2009.

raised, and the amount and degree of challenge from the county have made the case expensive and intricate. Standing, mootness, legislative activity, quasi-judicial proceedings, applicability of judicial review, maintaining a verbatim record, due process requirements in judicial review matters vs. due process without judicial review, conflicts of interest in a legislative capacity, the shifting legal landscape, federal court questions—all these issues and more have been raised by the county as part of their defenses to Martin's claims. The case has become both novel and difficult. With that, the requisite skill and attention to handle the case and the time dedicated to the case have both increased. Mr. Simms possesses the requisite skill to handle the matter properly and is experienced in this particular field. The fee appears to be hourly, and the prevailing charges for like work might well be much higher. The court would imagine Camas County's attorney fees far exceed Mr. Simms'. Factors (G) through (L) of Rule 54(e)(3) do not appear to be of significance in this case.

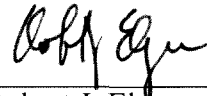
Pursuant to the *Rammell* decision, the court must disallow all fees claimed before the administrative hearing giving rise to this action, which took place in late March of 2007. Accordingly, fees claimed up through March of 2007 in the amount of \$9,530.61 are disallowed. The court has also deleted all billings for copies, postage, and preparation of trial exhibits on the May 31, 2008 billing in the sum of \$456.01 as these are discretionary costs, and there is no showing that these costs are both necessary and exceptional. The court calculates that these claims for copy costs and postage and preparation of trial exhibits totaled \$1,475.22. The court has noted fees claimed for trips to Jerome to appear in the related but separate matter filed before Judge Butler, for example in October of 2008. The court has also observed Mr. Simms deleted those fees

from this billing by entries at the end of the month for October. Mr. Simms claimed total fees and costs of \$83,008.39. The court has deducted from this request the sum of \$9,530.61 and \$1,475.22. All other fees and costs are allowed, and the court determines them to be reasonable. Martin is therefore awarded fees and costs of \$72,002.56.

Counsel for Martin is requested to prepare an appropriate form of judgment in that amount for the court's signature.

IT IS SO ORDERED.

Dated this 6 day of October, 2009



Robert J. Elgee
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8 day of October, 2009, I caused to be served a true copy of the foregoing ORDER, document by the method indicated below, and addressed to each of the following:

Christopher P. Simms
191 Sun Valley Road
P.O. Box 3123
Ketchum, ID 83340

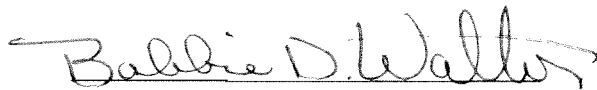
☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ FAX

Phillip J. Collaer
Anderson Julian & Hull, LLP
P.O. Box 7426
Boise, ID 83707

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ FAX

~~Stephanie J. Bonney~~ Paul Fitzer
Carl J. Withroe
Moore Smith Buxton & Turcke, Chtd.
Bannock Street, Suite 520
Boise, ID 83702

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ FAX



Deputy Clerk

Paul J. Fitzer, ISB No. 5675
MOORE SMITH BUXTON & TURCKE, CHTD.
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Telephone: (208)331-1800
Facsimile: (208)331-1202

FILED
10-19-09
HR 9:35 A.M.
ROLLIE BENNETT
CLERK OF THE DISTRICT COURT
Baldwin B. Walker

Attorneys for Defendants Camas County and the Individual Commissioners

**IN THE DISTRICT COURT FOR THE FIFTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR CAMAS COUNTY**

GEORGE MARTIN AND MARTIN CUSTOM
HOMES, LLC,

PLAINTIFFS-RESPONDENTS,

v.

ED SMITH AND CAMAS COUNTY, IDAHO, BY
AND THROUGH THE DULY ELECTED BOARD OF
COMMISSIONERS IN THEIR OFFICIAL CAPACITY,
KEN BACKSTROM, BILL DAVIS AND RON
CHAPMAN,

DEFENDANTS-APPELLANTS.

Case No. CV-2007-0024

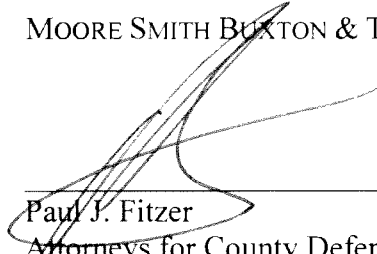
MOTION FOR STAY EXECUTION OF
AWARD OF ATTORNEY FEES AND
COSTS

COMES NOW, Camas County, the Defendants, by and through their attorney of record, Paul J. Fitzer, Moore Smith Buxton & Turcke, Chartered, and hereby move this Court, pursuant to Idaho Rules of Civil Procedure 62(f) and Idaho Appellant Rule 13(b) and the Court's inherent powers, to stay the execution of payment of attorney costs and fees as awarded in the Court's opinion of October 8th, 2009, regarding the Plaintiff's Motion for Attorney's Fees filed June 1st, 2009. This cause of action, under appeal before the Idaho Supreme Court in Case No. 36055, is

currently under SUSPENSION pursuant to I.A.R. 13 by order of the Supreme Court dated August 5, 2009, until such time of Remittitur of Record of Supreme Court Case # 36605-2009.

Respectfully submitted this 15 day of October, 2009.

MOORE SMITH BUXTON & TURCKE, CHTD.



Paul J. Fitzer

Attorneys for County Defendants

* * *

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Amended Notice of Appeal was this 11 day of October, 2009 served upon the following individuals and in the corresponding manner:

Christopher P. Simms
P.O. Box 3123
Ketchum, ID 83340

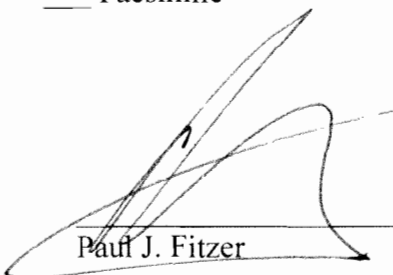
☒ U.S. Mail
☐ Hand Delivery
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Phillip J. Collaer
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chambers)
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Hailey, ID 83333

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Paul J. Fitzer

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FILED
10-26-09
HR 9:25 A.M.
ROLLIE BENNETT
CLERK OF THE DISTRICT COURT
Bobbie D. Wall

Attorneys for Defendants Camas County and the Individual Commissioners

**IN THE DISTRICT COURT FOR THE FIFTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR CAMAS COUNTY**

GEORGE MARTIN AND MARTIN CUSTOM HOMES, LLC,)	
)	
PLAINTIFFS-RESPONDENTS,	)	Case No. CV-2007-0024
)	
v.)	
	)	SECOND AMENDED NOTICE OF
ED SMITH AND CAMAS COUNTY, IDAHO, BY AND	)	APPEAL
THROUGH THE DULY ELECTED BOARD OF)	
COMMISSIONERS IN THEIR OFFICIAL CAPACITY,)	
KEN BACKSTROM, BILL DAVIS AND RON)	
CHAPMAN,)	
)	
DEFENDANTS-APPELLANTS.)	

TO: The above-named RESPONDENTS, GEORGE MARTIN and MARTIN CUSTOM HOMES, LLC, and the party's attorney, CHRISTOPHER P. SIMMS, P.O. Box 1861, Hailey, ID 83333, and the CLERK OF THE ABOVE-ENTITLED COURT:.

NOTICE IS HEREBY GIVEN THAT:

1. The above named Appellants, Ed Smith and Camas County, Idaho, by and through the duly elected Board of Commissioners in their official capacity Ken Backstrom, Bill Davis, and Ron Chapman, appeal against the above-named respondents to the Idaho Supreme

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ORIGINAL

Court from the final judgment certified pursuant to I.R.C.P. 54(b) entitled Order Reissuing Findings of Facts, Conclusions of Law, and Order Following Trial entered in the above-entitled action on the 29th day of May, 2009 which re-adopted the December 3rd, 2008 Findings of Fact, Conclusions of Law, and Order Following Trial and Memorandum Decision on Attorney's Fees and Costs in the above-entitled action on the 8th day of October, 2009, Honorable Judge Robert J. Elgee presiding.

2. The Appellant has a right to appeal to the Idaho Supreme Court, and the judgment and order described in paragraph 1 above is an appealable judgment and order under and pursuant to Rule 11(a)(1), I.A.R.

3. A preliminary statement of the issues on appeal which the appellant now intends to assert in the appeal is as follows:

(a) Whether the District Court, before the Honorable Robert Elgee, erred in ruling that it had jurisdiction over this matter where the case was properly removed to the United States District Court before the Honorable Candy Dale in Case No. 1:08 CV-00470-CWD. Subsequent to this removal, the District Court issued its ruling in this matter.

(b) Whether the District Court erred in ruling that the case was still a justiciable case or controversy and not rendered moot by Camas County's enactment of subsequent legislation repealing the challenged legislation.

(c) Declaratory Judgment Action: Whether the District Court erred in permanently enjoining the County's legislation in a declaratory judgment action where Respondent wholly failed to carry its burden and the evidence could not support a court's finding that:

i. Standing / Harm: Respondent suffered a distinct palpable injury differentiating him from the citizenry at large; and

ii. Nexus: The injury suffered was by virtue of, or has a fairly traceable connection between, the claimed injury and the challenged conduct;

iii. Challenged Conduct: The County committed a procedural/ substantive error or the challenged legislative activity is confiscatory, arbitrary, unreasonable, or capricious in nature as applied to the Respondent.

(d) Whether the District Court erred in holding that the enactment of a comprehensive plan, land use map, zoning ordinance, and zoning map are quasi-judicial rather than legislative in nature;

(e) Whether the District Court applied the wrong standard of review, ruling that the County's legislative activity was governed by, and Respondent had standing to bring a declaratory judgment action under, LLUPA's judicial review provisions including I.C. §67-6521, I.C. §67-6535, I.C. §67-6536, and the Idaho Administrative Procedure Act, I.C. §67-5201 *et seq.*;

(f) Whether the District Court erred in basing a permanent injunction on finding that Respondent was entitled to and was denied due process of law for defective notice where the evidence is uncontradicted that Respondent had actual notice and a meaningful opportunity to be heard, and did, in fact, attend, testify, and present evidence at each and every public hearing.

(g) Whether the District Court erred in basing a permanent injunction on a finding that while Respondent's actual notice might be a defense against challenges by affected

SECOND AMENDED NOTICE OF APPEAL -- 3

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persons in a judicial review context, the County is held to an even higher due process standard where legislative activity is applicable to the general public as a whole.

(h) Whether the District Court erred in finding that LLUPA's judicial review provisions are applicable in this case in the absence of evidence demonstrating that, pursuant to Idaho Code §67-6521, Respondent had an interest in real property adversely affected by the issuance or denial of a permit authorizing development.

(i) Whether the District Court erred in ruling that I.C. §67-6536 was applicable to the governmental activity in this matter, and, if applicable, that the County did not comply with the statutory requirements.

(j) Whether the District Court erred in ruling that I.C. §67-6535 was applicable to the governmental activity in this matter requiring a written decision in amending the zoning ordinance, zoning map, comprehensive plan, and land use map, beyond the legislation themselves;

(k) Whether the District Court erred in ruling that the County failed to comply with I.C. §67-6509;

(l) Whether the District Court erred in ruling that the County failed to comply with I.C. §67-6508;

(m) Whether the District Court erred in ruling that the County failed to comply with I.C. §67-6511;

(n) Whether the District Court erred in ruling that the County violated I.C. §67-6506;

(o) Whether the District Court abused its discretion in finding that Respondent is entitled to an award of attorney fees pursuant to I.C. §12-117.

(p) Whether Appellant is entitled to an award of attorney fees on appeal under I.C. § 12-117.

(q) Whether the District Court abused its discretion in awarding the Plaintiff attorney fees pursuant to its Memorandum Decision on Attorney's Fees and Costs entered October 8th, 2009.

4. No order been entered sealing all or any portion of the record.

5. A reporter's transcript is requested. The appellant requests the preparation of the following portions of the reporter's transcript: the reporter's standard transcript pursuant to Rule 25, I.A.R. supplemented by the following:

- (a) June 27, 2007, hearing
- (b) July 19, 2007, telephonic hearing (held in Blaine County)
- (c) September 25, 2007, hearing
- (d) October 23, 2007, telephonic hearing
- (e) November 13, 2007, hearing
- (f) December 11, 2007, hearing
- (g) January 29, 2008, telephonic hearing (held in Blaine County)
- (h) February 26, 2008, hearing
- (i) March 7, 2008, hearing
- (j) May 5, 2008, telephonic status conference (occurred in Blaine County)
- (k) May 20-21, 2008, hearing

- (l) August 11, 2008, telephonic status conference (held in Blaine County)
- (m) August 20, 2008, hearing
- (n) May 26, 2009, hearing (held in Blaine County)
- (o) July 22, 2009, hearing re: attorney fees and cost

6. Appellant requests that those documents which are automatically included under Rule 28, I.A.R., be included in the clerk's record. Appellant also requests the following documents be included in the clerk's record:

(a) 06/20/2007 – Answer of Defendants Camas County, The Individual Members of the Camas County Board of County Commissioners, Ed Smith in his Capacity as a Member of the Camas County Planning and Zoning Commission

(b) 07/06/2007 – Memorandum

(c) 07/13/2007 – Verified Application for Temporary Restraining Order and Preliminary Injunction Relating to Destruction of Public Records

(d) 07/16/2007 – Motion to Strike and Objection to Plaintiff's Verified Application for a TRO and Pre-Injunction Relating to Destruction of Public Record * * * **Note: This document is erroneously entitled as described, but it is in substance a Reply Post-Hearing Memorandum filed by Defendants* * ***

(e) 07/19/2007 – Objection to Plaintiff's Verified Application for a Temporary Restraining Order and Preliminary Injunction Relating to Destruction of Public Records

(f) 07/19/2007 – Affidavit of Dwight Butler In Support of Defendants’ Objection to Plaintiffs’ Verified Application for a Temporary Restraining Order and Preliminary Injunction to Destruction of Public Records

(g) 07/27/2007 – Order Denying Plaintiffs’ July 13, 2007 Verified Application for Temporary Restraining Order and Preliminary Injunction Relating to Destruction of Public Records

(h) 08/13/2007 – Decision on Status of Camas County Planning and Zoning Commission for Purposes of a Preliminary Injunction

(i) 10/09/2007 – Post Hearing Memorandum Supporting the County Defendants Objection to Plaintiffs’ Application for a Temporary Restraining Order and Preliminary Injunction

(j) 10/22/2007 – Motion to Strike Affidavit of George Martin In Support of Plaintiffs’ Post Hearing Memorandum (Second Evidentiary Hearing)

(k) 10/22/2007 – Memorandum Supporting Motion to Strike Affidavit of George Martin in Support of Plaintiffs’ Post Hearing Memorandum (Second Evidentiary Hearing)

(l) 12/11/2007 – Order Granting Leave to Amend Petition for Declaratory Judgment

(m) 12/13/2007 – Amended Petition for Breach of Contract

(n) 12/28/2007 – Decision on Requirements of a “Transcribable Verbatim Record” and Other Records for Purposes of a Preliminary Injunction

- (o) 01/22/2008 – Plaintiffs Motion to Hold Camas County Defendants In Contempt of Court for Violation of Preliminary Injunction
- (p) 01/23/2008 – Memorandum in Opposition to Plaintiffs’ Motion to Hold Camas County Defendants In Contempt of Court for Violation of Preliminary Injunction
- (q) 01/23/2008 – Affidavit of Stephanie J. Bonney In Support of Defendants’ Objection to Plaintiffs’ Motion for Contempt for Alleged Violation of Preliminary Injunction
- (r) 03/11/2008 – Order Following Contempt Hearing and Order Expanding Preliminary Injunction
- (s) 03/12/2008 – Post-Hearing Memorandum Objecting to Plaintiffs’ Motion for Preliminary Injunction (Conflict of Interest Allegation)
- (t) 04/02/2008 – Decision On Conflict of Interests Issue for Purposes of a Preliminary Injunction
- (u) 05/13/2008 – Motion to Dismiss
- (v) 05/19/2008 – Exhibit List, Defendants
- (w) 05/20/2008 – Exhibit List
- (x) 05/20/2008 – Plaintiffs’ Application for Temporary Restraining Order, Preliminary Injunction and Declaratory Relief
- (y) 05/21/2008 – Stipulation as to Facts and Admission of Documentary Evidence
- (z) 08/08/2008 – Plaintiffs’ Motion for Leave to Amend Petition by Adding Two Additional Causes of Action: 1) Declaratory and Injunctive Relief Against Resolutions 114 and 115 and Ordinances #157 and 158; 2) Damages for Violations of State and Federal Law
- SECOND AMENDED NOTICE OF APPEAL -- 8**

pg 771

(aa) 08/08/2008 – Second Amended Petition for Breach of Contract, Tortious Interference With Contract, For Declaratory Relief, Damages for Violation of Procedural and Substantive Due Process Rights and Equal Protection of Law

(bb) 08/08/2008 – Plaintiffs’ Verified Application for Temporary Restraining Order, Preliminary Injunction and Declaratory Relief

(cc) 08/27/2008 – Response to Plaintiffs’ Petition for Leave to Amend Complaint

(dd) 09/29/2008 – Defendants Camas County, et al Post Trial Brief

(ee) 10/08/2008 – Order on Plaintiffs’ Motion for Leave to File Amended Complaint

(ff) 10/15/2008 – Amended Answer

(gg) 12/22/2008 – Memorandum of Costs and Attorney Fees

(ff) 12/29/2008 - Objection to Attorney Fees

(gg) 01/02/2009 – Notice of Removal

(hh) 01/12/2009 – Appealed to Supreme Court

(ii) 01/14/2009 – Clerk’s Certificate of Appeal

(jj) 01/14/2009 – Plaintiff’s Request to Supplement Clerk’s Record on Appeal

(kk) 01/15/2009 – Amended Notice of Appeal

(ll) 03/19/2009 – Plaintiff’s Motion for Order Reissuing Findings of Fact, Conclusions of Law, and Order Following Trial

(mm) 03/24/2009 – Order Granting Motion to Suspend Appeal

(nn) 05/15/2009 – Response to Plaintiff's Motion for Order Reissuing Findings of Fact, Conclusions of Law, and Order Following Trial

(oo) 05/29/2009 – Order Reissuing Findings of Fact, Conclusions of Law, and Order Following Trial

(pp) 06/02/2009 – Plaintiff's Motion for Attorney's Fees and Costs

(qq) 06/02/2009 – Lodged Memorandum of Amount Due, Interest Costs, and Attorney Fees

(rr) 06/02/2009 – Affidavit in Support of Attorney Fees and Costs

(ss) 06/12/2009 – Response in Objection to Motion for Attorney Fees and Costs Pursuant to Rule 54(d)(6) and (e)(6) of the Idaho Rules of Civil Procedure

(tt) 10/08/2009 – Memorandum Decision on Attorney's Fees and Costs

Pursuant to I.A.R. 31, Appellant requests that all tapes, exhibits, including charts, graphs, maps, or other documents, offered and admitted during the proceedings, whether hearing or trial, be included as exhibits to the record.

7. I certify that:

(a) A copy of this second amended notice of appeal has been served on each reporter of whom a transcript has been requested as named below at the address set out below:

Susan Israel
Court Reporter
Fifth Judicial District, Camas County
P.O. Box 430
Fairfield, Idaho 83327

Maureen Newton
Court Reporter
Fifth Judicial District, Minidoka County
P.O. Box 368
Rupert, Idaho 83350

(b) The Appellant is exempt from paying the estimated fee for preparation of the clerk's record because Appellant is an officer of the State of Idaho acting in his official

SECOND AMENDED NOTICE OF APPEAL -- 10

pg 773

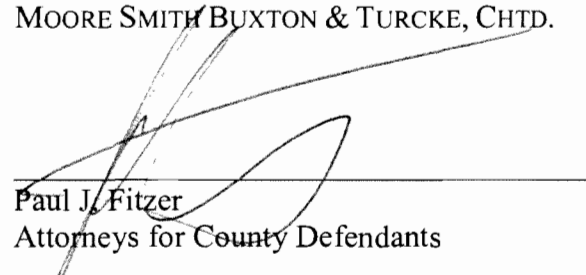
capacity, and Section 31-3212(2), Idaho Code, provides that county officers shall not charge any fee for any services rendered in any action or proceeding in which any state officer in his official capacity is a party.

(c) The Appellant is exempt from paying the appellate filing fee because Section 67-2301, Idaho Code, provides that no filing fee shall be charged for services rendered to any state officer in the performance of his official duties.

(d) Service has been made upon all parties required to be served pursuant to Rule 20, I.A.R.

Respectfully submitted this 23 day of October, 2009.

MOORE SMITH BUXTON & TURCKE, CHTD.



Paul J. Fitzer
Attorneys for County Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Second Amended Notice of Appeal was this 23 day of October, 2009 served upon the following individuals and in the corresponding manner:

Christopher Simms
The Pine Street Station Building
400 S. Main Street, Suite 303
P.O. Box 1861
Hailey, ID 83333

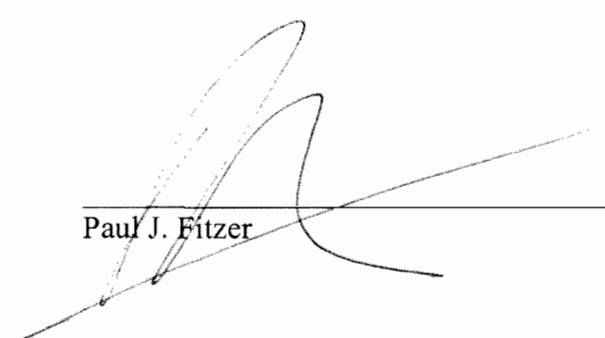
☒ U.S. Mail
☐ Hand Delivery
☐ Facsimile

Phillip J. Collaer
ANDERSON JULIAN & HULL, LLP
P.O. Box 7426
Boise, ID 83707

☒ U.S. Mail
☐ Hand Delivery
☐ Facsimile

Hon. Robert Elgee
Blaine County Courthouse (resident
chambers)
202 S. Second Ave. S, Suite 110
Hailey, ID 83333

☒ U.S. Mail
☐ Hand Delivery
☐ Facsimile



Paul J. Fitzer

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR CAMAS COUNTY

FILED
10-4-09
4:50 PM
CLERK
Kelli Blumert

GEORGE MARTIN and MARTIN CUSTOM
HOMES, LLC,

Plaintiff-Respondents,

V.

ED SMITH AND CAMAS COUNTY, IDAHO, by
And through the duly elected Board of
Commissioners in their official capacity,
KEN BACKSTROM, BILL DAVIS, and RON
CHAPMAN,

Defendants-Appellants.

Court No. CV-2007-24

**CLERK'S CERTIFICATE OF
OF APPEAL**

Appeal from: Fifth Judicial District, Camas County. Honorable Robert Elgee presiding.

Case number from court: CV 2007-24

Order or judgment appealed from: May 29, 2009, Order Reissuing Findings of Facts,
Conclusions of Law, and Order Following Trial.

Attorney for Appellant: Paul Fitzer

Attorney for Respondent: Christopher P. Simms

Appealed by: Defendants

Appealed against: Plaintiffs

Second Amended Notice of Appeal Filed October 26, 2009

Notice of Cross-Appeal filed:

Amended Notice of Cross-Appeal filed:

Appellate fee paid: None-Exempt

Respondent's Request for additional clerk's record filed:

Respondent's Request for additional reporter's transcript filed:

Was District Court Reporter's Transcript requested? Yes

Name of Reporter: Susan Israel, 201 2nd Ave S, Ste 106, Hailey, ID 83333
Maureen Newton, P.O. Box 368, Rupert, ID 83350

Clerks Certificate of Appeal - 1

pg 774

Request for additional reporter's transcript:

Dated: November 4, 2009

F.R. BENNETT
Clerk of the District Court

By: KORIN BRADGETT
Deputy Clerk

Clerks Certificate of Appeal - 2

pg 777

CHRISTOPHER P. SIMMS
Attorney at Law
Pine Street Station Bldg., Ste. 303
400 S. Main Street
P.O. Box 1861
Hailey, Idaho 83333
Tel: 208 788 2800
Fax: 208 788 2300
ISB# 7473

FILED
11-6-09
HR 9:55 A.M.
ROLLIE BENNETT
CLERK OF THE DISTRICT COURT
Baldr B. Walter

Attorney for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF CAMAS

GEORGE MARTIN,)
)
Plaintiff,)
)
and)
)
MARTIN CUSTOM)
HOMES, L.L.C.,)
)
Plaintiff,)
)
v.)
)
ED SMITH,)
)
Defendant,)
and)
)
CAMAS COUNTY, IDAHO,)
By and through the duly elected)
Board of Commissioners in)
their official capacities.)
)
)
KEN BAXTROM,)
BILL DAVIS, and)
RON CHAPMAN,)
)
Defendants.)
_____)

Case No. CV-07-24

PLAINTIFFS' OBJECTIONS TO &
REQUEST FOR ORAL ARGUMENT
ON MOTION FOR STAY OF
EXECUTION OF AWARD
OF ATTORNEY FEES & COSTS

COMES NOW Plaintiffs by and through their attorney of record, Christopher P. Simms, and hereby submits these Objections to and Request of Oral Argument on Motion for Stay of Execution of Award of Attorney Fees and Costs and therefore states as follows;

1. On or about October 8, 2009 this Court issued its Memorandum Decision on Attorney's Fees and Costs herein, thereby awarding Martin fees and costs in the amount of seventy two thousand two dollars and fifty six cents (\$72,002.56) and directed Plaintiffs' counsel to prepare a judgment form for the Court's signature. (judgment form attached hereto)
2. On or about October 15, 2009 Defendants filed a Motion for Stay of Execution of Award of Attorney Fees and Costs, citing I.R.C.P. 62(f) and I.A.R 13(b) in support thereof.
3. On or about October 23, 2009 Defendants filed an Amended Notice of Appeal relating to the underlying judgment and notably the October 8, 2009 Memorandum Decision on Attorney's Fees and Costs.
4. Idaho Rule of Civil Procedure 62(f) provides as follows, "The provisions in this rule do not limit any power of the Supreme Court or a district court acting in its appellate capacity or the judge thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered."
5. Idaho Appellate Rule 13(b) provides in pertinent part, "... (b) Stay Upon Appeal - Powers of District Court - Civil Actions. In civil actions, unless prohibited by order of the

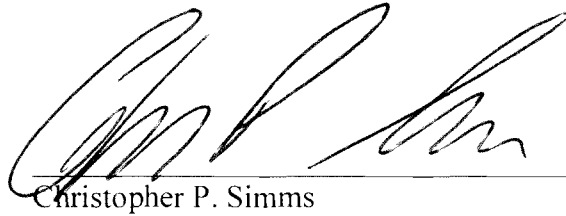
Supreme Court, the district court shall have the power and authority to rule upon the following motions and to take the following actions during the pendency on an appeal: ...8) Enter a stay of execution or enforcement of any injunction or mandatory order entered by the court upon such conditions and upon the posting of such security as the court determines in its discretion. (9) Make any order regarding the taxing of costs or determination of attorneys fees incurred in the trial of the action..."

6. Idaho Rule of Civil Procedure 62(d) also appears to be relevant because notice of appeal has now been filed. The rule states "When an appeal is taken from the district court to the Supreme Court, the proceedings in the district court upon the judgment or order appealed from shall be stayed as provided by the Idaho Appellate Rules (I.A.R.)."

7. Each of the relevant rules is stated in discretionary not mandatory terms. Plaintiffs can identify only a single case addressing the issue of whether stay is mandatory or discretionary. In Bank of Idaho v. Nesseth, 104 Idaho 842, 664 P.2d 270 (Sup Ct 1983), the District Court declined to enter a stay of execution on appeal, which was upheld by the Supreme Court. The Court reasoned that the discretionary language of rules controlled, and the district Court properly exercised its discretion.

WHEREFORE, Plaintiffs pray this Court deny Defendants' Motion for Stay of Execution and request oral argument in support of these objections.

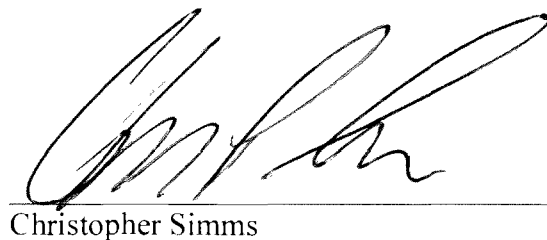
CHRISTOPHER P. SIMMS
ATTORNEY FOR PLAINTIFF



Christopher P. Simms

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3 day of Nov 2009, I served a true and correct copy of the foregoing PLAINTIFFS' OBJECTION TO AND REQUEST FOR ORAL ARGUMENT ON MOTION FOR STAY OF EXECUTION OF AWARD OF ATTORNEY FEES & COSTS by delivering same, Paul Fitzer, Attorney for Camas County Defendants 950 W. Bannock St., Ste 520, Boise, Idaho 83702 via facsimile number 208 331 1202



Christopher Simms

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO
IN AND FOR THE COUNTY OF CAMAS

GEORGE MARTIN,

Plaintiff,

and

MARTIN CUSTOM
HOMES, L.L.C.,

Plaintiff,

vs.

ED SMITH,

Defendant,

and

CAMAS COUNTY, IDAHO,
By and through the duly elected
Board of Commissioners in
their official capacity,

KEN BAXTROM,
BILL DAVIS, and
RON CHAPMAN,

Defendants.

FILED
11-17-09
HR 9:30 A.M.

ROLLIE BENNETT
CLERK OF THE DISTRICT COURT
Rollie D. Bennett

Case No. CV-2007-0024

JUDGMENT

IT IS HEREBY ORDERED that Judgment is entered for the Plaintiffs, George
Martin and Martin Custom Homes, LLC, and against Defendant [REDACTED] Camas
County Idaho by and through the duly elected Board of Commissioners in their official
capacity, Ken Backstrom, Bill Davis and Ron Chapman, in the amount of \$72,002.56

only (12)

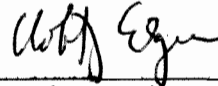
JUDGMENT

1

pg 782

(Seventy Two Thousand Two Dollars and Fifty Six Cents) per this Court's Memorandum
Decision on Attorney's Fees and Costs dated October 8, 2009;

DATED this 12 day of November 2009



Hon. Robert J. Elgee
Fifth District Court Judge

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 17th day of November, 2009, I served a true and correct copy of the foregoing Document, to the following:

Paul J. Fitzer
Moore Smith Buxton & Turcke, Chtd.
950 W. Bannock Street, Suite 520
Boise, Idaho 83702

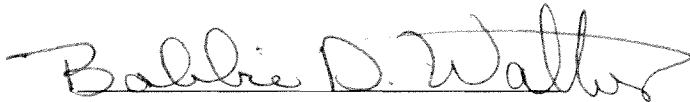
X Mail

Phillip J. Collaer
Anderson Julian & Hull, LLP
P.O. Box 7426
Boise, Idaho 83707

X Mail

Christopher P. Simms
P.O. Box 1861
Hailey, Idaho 83333

X Mail



Bobbie D. Walton, Deputy Clerk

Judgment -3

pg 784

12-10-09
11:15 AM
KORR BLANK

IN THE DISTRICT COURT FOR THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR CAMAS COUNTY

GEORGE MARTIN and MARTIN CUSTOM
HOMES, LLC,

Plaintiffs,

v.

ED SMITH, *et al.*,

Defendants.

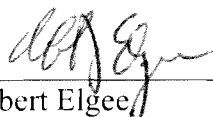
Case No. CV-07-24

ORDER GRANTING CAMAS COUNTY'S
MOTION TO STAY EXECUTION OF
AWARD OF ATTORNEY FEES AND
COSTS

WHEREAS the above matter came before this Court for hearing on November 30, 2009,
on Defendant's, Camas County, Motion for Stay of Execution of Award of Attorney Fees and
Costs Upon review of the pleadings and papers on file, hearing argument of counsel, and for
good cause shown;

IT IS HEREBY ORDERED that the County's Motion to Stay Execution of Attorney Fees
and Costs is hereby granted.

Dated this 8 day of December, 2009


Robert Elgee
District Judge

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Order was this 10th
day of December, 2009, served upon the following individuals and in the
corresponding manner:

Christopher P. Simms
The Pine Street Station Building
400 S. Main Street, Suite 303
P.O. Box 1861
Hailey, ID 83333

Method: us mail

Phillip J. Collaer
ANDERSON JULIAN & HULL, LLP
P.O. Box 7426
Boise, ID 83707

Method: US mail

Paul J. Fitzer
MOORE SMITH BUXTON & TURCKE, CHTD.
Banner Bank Building
950 West Bannock Street, Suite 520
Boise, ID 83702

Method: us mail

By:

Karen Blodgett

Paul J. Fitzer, ISB No. 5675
MOORE SMITH BUXTON & TURCKE, CHTD.
950 W. Bannock Street, Suite 520
Boise, ID 83702
Telephone: (208)331-1800
Facsimile: (208)331-1202

FILED
12-23-09
1:15 P.
Bobbie D. Walter

Attorneys for Defendants Camas County and the Individual Commissioners

**IN THE DISTRICT COURT FOR THE FIFTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR CAMAS COUNTY**

GEORGE MARTIN AND MARTIN CUSTOM HOMES, LLC,)	
)	
)	
PLAINTIFFS-RESPONDENTS,	)	Case No. CV-2007-0024
)	
v.)	
	)	THIRD AMENDED NOTICE OF
ED SMITH AND CAMAS COUNTY, IDAHO, BY AND	)	APPEAL
THROUGH THE DULY ELECTED BOARD OF)	
COMMISSIONERS IN THEIR OFFICIAL CAPACITY,)	
KEN BACKSTROM, BILL DAVIS AND RON)	
CHAPMAN,)	
)	
DEFENDANTS-APPELLANTS.)	

TO: The above-named RESPONDENTS, GEORGE MARTIN and MARTIN CUSTOM HOMES, LLC, and the party's attorney, CHRISTOPHER P. SIMMS, P.O. Box 1861, Hailey, ID 83333, and the CLERK OF THE ABOVE-ENTITLED COURT:.

NOTICE IS HEREBY GIVEN THAT:

1. The above named Appellants, Ed Smith and Camas County, Idaho, by and through the duly elected Board of Commissioners in their official capacity Ken Backstrom, Bill Davis, and Ron Chapman, appeal against the above-named respondents to the Idaho Supreme

Court from the final judgment certified pursuant to I.R.C.P. 54(b) entitled Order Reissuing Findings of Facts, Conclusions of Law, and Order Following Trial entered in the above-entitled action on the 29th day of May, 2009 which re-adopted the December 3rd, 2008 Findings of Fact, Conclusions of Law, Order Following Trial and Memorandum Decision on Attorney's Fees and Costs, in the above-entitled action on the 8th day of October, 2009, and Judgment, in the above-entitled action on the 17th day of November, 2009, Honorable Judge Robert J. Elgee presiding.

2. The Appellant has a right to appeal to the Idaho Supreme Court, and the judgment and order described in paragraph 1 above is an appealable judgment and order under and pursuant to Rule 11(a)(1), I.A.R.

3. A preliminary statement of the issues on appeal which the appellant now intends to assert in the appeal is as follows:

(a) Whether the District Court, before the Honorable Robert Elgee, erred in ruling that it had jurisdiction over this matter where the case was properly removed to the United States District Court before the Honorable Candy Dale in Case No. 1:08 CV-00470-CWD. Subsequent to this removal, the District Court issued its ruling in this matter.

(b) Whether the District Court erred in ruling that the case was still a justiciable case or controversy and not rendered moot by Camas County's enactment of subsequent legislation repealing the challenged legislation.

(c) Declaratory Judgment Action: Whether the District Court erred in permanently enjoining the County's legislation in a declaratory judgment action where Respondent wholly failed to carry its burden and the evidence could not support a court's finding that:

i. Standing / Harm: Respondent suffered a distinct palpable injury differentiating him from the citizenry at large; and

ii. Nexus: The injury suffered was by virtue of, or has a fairly traceable connection between, the claimed injury and the challenged conduct;

iii. Challenged Conduct: The County committed a procedural/ substantive error or the challenged legislative activity is confiscatory, arbitrary, unreasonable, or capricious in nature as applied to the Respondent.

(d) Whether the District Court erred in holding that the enactment of a comprehensive plan, land use map, zoning ordinance, and zoning map are quasi-judicial rather than legislative in nature;

(e) Whether the District Court applied the wrong standard of review, ruling that the County's legislative activity was governed by, and Respondent had standing to bring a declaratory judgment action under, LLUPA's judicial review provisions including I.C. §67-6521, I.C. §67-6535, I.C. §67-6536, and the Idaho Administrative Procedure Act, I.C. §67-5201 *et seq.*;

(f) Whether the District Court erred in basing a permanent injunction on finding that Respondent was entitled to and was denied due process of law for defective notice where the evidence is uncontradicted that Respondent had actual notice and a meaningful opportunity to be heard, and did, in fact, attend, testify, and present evidence at each and every public hearing.

(g) Whether the District Court erred in basing a permanent injunction on a finding that while Respondent's actual notice might be a defense against challenges by affected

THIRD AMENDED NOTICE OF APPEAL -- 3

pg 789

persons in a judicial review context, the County is held to an even higher due process standard where legislative activity is applicable to the general public as a whole.

(h) Whether the District Court erred in finding that LLUPA's judicial review provisions are applicable in this case in the absence of evidence demonstrating that, pursuant to Idaho Code §67-6521, Respondent had an interest in real property adversely affected by the issuance or denial of a permit authorizing development.

(i) Whether the District Court erred in ruling that I.C. §67-6536 was applicable to the governmental activity in this matter, and, if applicable, that the County did not comply with the statutory requirements.

(j) Whether the District Court erred in ruling that I.C. §67-6535 was applicable to the governmental activity in this matter requiring a written decision in amending the zoning ordinance, zoning map, comprehensive plan, and land use map, beyond the legislation themselves;

(k) Whether the District Court erred in ruling that the County failed to comply with I.C. §67-6509;

(l) Whether the District Court erred in ruling that the County failed to comply with I.C. §67-6508;

(m) Whether the District Court erred in ruling that the County failed to comply with I.C. §67-6511;

(n) Whether the District Court erred in ruling that the County violated I.C. §67-6506;

(o) Whether the District Court abused its discretion in finding that Respondent is entitled to an award of attorney fees pursuant to I.C. §12-117.

(p) Whether Appellant is entitled to an award of attorney fees on appeal under I.C. § 12-117.

(q) Whether the District Court abused its discretion in awarding the Plaintiff attorney fees pursuant to its Memorandum Decision on Attorney's Fees and Costs entered October 8th, 2009.

(r) Whether the District Court abused its discretion in awarding the Plaintiff attorney fees pursuant to its Judgment entered November 17th, 2009.

4. No order been entered sealing all or any portion of the record.

5. A reporter's transcript is requested. The appellant requests the preparation of the following portions of the reporter's transcript: the reporter's standard transcript pursuant to Rule 25, I.A.R. supplemented by the following:

- (a) June 27, 2007, hearing
- (b) July 19, 2007, telephonic hearing (held in Blaine County)
- (c) September 25, 2007, hearing
- (d) October 23, 2007, telephonic hearing
- (e) November 13, 2007, hearing
- (f) December 11, 2007, hearing
- (g) January 29, 2008, telephonic hearing (held in Blaine County)
- (h) February 26, 2008, hearing
- (i) March 7, 2008, hearing

- (j) May 5, 2008, telephonic status conference (occurred in Blaine County)
- (k) May 20-21, 2008, hearing
- (l) August 11, 2008, telephonic status conference (held in Blaine County)
- (m) August 20, 2008, hearing
- (n) May 26, 2009, hearing (held in Blaine County)
- (o) July 22, 2009, hearing re: attorney fees and cost

6. Appellant requests that those documents which are automatically included under Rule 28, I.A.R., be included in the clerk's record. Appellant also requests the following documents be included in the clerk's record:

(a) 06/20/2007 – Answer of Defendants Camas County, The Individual Members of the Camas County Board of County Commissioners, Ed Smith in his Capacity as a Member of the Camas County Planning and Zoning Commission;

(b) 07/06/2007 – Memorandum;

(c) 07/13/2007 – Verified Application for Temporary Restraining Order and Preliminary Injunction Relating to Destruction of Public Records;

(d) 07/16/2007 – Motion to Strike and Objection to Plaintiff's Verified Application for a TRO and Pre-Injunction Relating to Destruction of Public Record * * * **Note: This document is erroneously entitled as described, but it is in substance a Reply Post-Hearing Memorandum filed by Defendants* * *;**

(e) 07/19/2007 – Objection to Plaintiff's Verified Application for a Temporary Restraining Order and Preliminary Injunction Relating to Destruction of Public Records;

(f) 07/19/2007 – Affidavit of Dwight Butler In Support of Defendants’ Objection to Plaintiffs’ Verified Application for a Temporary Restraining Order and Preliminary Injunction to Destruction of Public Records;

(g) 07/27/2007 – Order Denying Plaintiffs’ July 13, 2007 Verified Application for Temporary Restraining Order and Preliminary Injunction Relating to Destruction of Public Records;

(h) 08/13/2007 – Decision on Status of Camas County Planning and Zoning Commission for Purposes of a Preliminary Injunction;

(i) 10/09/2007 – Post Hearing Memorandum Supporting the County Defendants Objection to Plaintiffs’ Application for a Temporary Restraining Order and Preliminary Injunction;

(j) 10/22/2007 – Motion to Strike Affidavit of George Martin In Support of Plaintiffs’ Post Hearing Memorandum (Second Evidentiary Hearing);

(k) 10/22/2007 – Memorandum Supporting Motion to Strike Affidavit of George Martin in Support of Plaintiffs’ Post Hearing Memorandum (Second Evidentiary Hearing);

(l) 12/11/2007 – Order Granting Leave to Amend Petition for Declaratory Judgment;

(m) 12/13/2007 – Amended Petition for Breach of Contract;

(n) 12/28/2007 – Decision on Requirements of a “Transcribable Verbatim Record” and Other Records for Purposes of a Preliminary Injunction;

(o) 01/22/2008 – Plaintiffs Motion to Hold Camas County Defendants In Contempt of Court for Violation of Preliminary Injunction;

(p) 01/23/2008 – Memorandum in Opposition to Plaintiffs' Motion to Hold Camas County Defendants In Contempt of Court for Violation of Preliminary Injunction;

(q) 01/23/2008 – Affidavit of Stephanie J. Bonney In Support of Defendants' Objection to Plaintiffs' Motion for Contempt for Alleged Violation of Preliminary Injunction;

(r) 03/11/2008 – Order Following Contempt Hearing and Order Expanding Preliminary Injunction;

(s) 03/12/2008 – Post-Hearing Memorandum Objecting to Plaintiffs' Motion for Preliminary Injunction (Conflict of Interest Allegation);

(t) 04/02/2008 – Decision On Conflict of Interests Issue for Purposes of a Preliminary Injunction;

(u) 05/13/2008 – Motion to Dismiss;

(v) 05/19/2008 – Exhibit List, Defendants;

(w) 05/20/2008 – Exhibit List;

(x) 05/20/2008 – Plaintiffs' Application for Temporary Restraining Order, Preliminary Injunction and Declaratory Relief;

(y) 05/21/2008 – Stipulation as to Facts and Admission of Documentary Evidence;

(z) 08/08/2008 – Plaintiffs' Motion for Leave to Amend Petition by Adding Two Additional Causes of Action: 1) Declaratory and Injunctive Relief Against Resolutions 114 and 115 and Ordinances #157 and 158; 2) Damages for Violations of State and Federal Law;

(aa) 08/08/2008 – Second Amended Petition for Breach of Contract, Tortious Interference With Contract, For Declaratory Relief, Damages for Violation of Procedural and Substantive Due Process Rights and Equal Protection of Law;

(bb) 08/08/2008 – Plaintiffs' Verified Application for Temporary Restraining Order, Preliminary Injunction and Declaratory Relief;

(cc) 08/27/2008 – Response to Plaintiffs' Petition for Leave to Amend Complaint;

(dd) 09/29/2008 – Defendants Camas County, et al Post Trial Brief;

(ee) 10/08/2008 – Order on Plaintiffs' Motion for Leave to File Amended Complaint;

(ff) 10/15/2008 – Amended Answer;

(gg) 12/22/2008 – Memorandum of Costs and Attorney Fees;

(ff) 12/29/2008 - Objection to Attorney Fees;

(gg) 01/02/2009 – Notice of Removal;

(hh) 01/12/2009 – Appealed to Supreme Court;

(ii) 01/14/2009 – Clerk's Certificate of Appeal;

(jj) 01/14/2009 – Plaintiff's Request to Supplement Clerk's Record on Appeal;

(kk) 01/15/2009 – Amended Notice of Appeal;

(ll) 03/19/2009 – Plaintiff's Motion for Order Reissuing Findings of Fact, Conclusions of Law, and Order Following Trial;

(mm) 03/24/2009 – Order Granting Motion to Suspend Appeal;

(nn) 05/15/2009 – Response to Plaintiff's Motion for Order Reissuing Findings of Fact, Conclusions of Law, and Order Following Trial;

(oo) 05/29/2009 – Order Reissuing Findings of Fact, Conclusions of Law, and Order Following Trial;

(pp) 06/02/2009 – Plaintiff's Motion for Attorney's Fees and Costs;

(qq) 06/02/2009 – Lodged Memorandum of Amount Due, Interest Costs, and Attorney Fees;

(rr) 06/02/2009 – Affidavit in Support of Attorney Fees and Costs;

(ss) 06/12/2009 – Response in Objection to Motion for Attorney Fees and Costs Pursuant to Rule 54(d)(6) and (e)(6) of the Idaho Rules of Civil Procedure;

(tt) 10/08/2009 – Memorandum Decision on Attorney's Fees and Costs;

(uu) 10/19/2009 – Motion for Stay of Execution of Award of Attorney Fees and Costs;

(vv) 11/06/2009 – Plaintiffs' Objection to and Request for Oral Argument on Motion for Stay of Execution of Award of Attorneys' Fees and Costs;

(ww) 11/17/2009 – Judgment; and

(xx) 12/10/2009 – Order Granting Camas County's Motion to Stay Execution of Award of Attorney Fees and Costs.

Pursuant to I.A.R. 31, Appellant requests that all tapes, exhibits, including charts, graphs, maps, or other documents, offered and admitted during the proceedings, whether hearing or trial, be included as exhibits to the record.

7. I certify that:

(a) A copy of this second amended notice of appeal has been served on each reporter of whom a transcript has been requested as named below at the address set out below:

Susan Israel
Court Reporter
Fifth Judicial District, Camas County
P.O. Box 430
Fairfield, Idaho 83327

Maureen Newton
Court Reporter
Fifth Judicial District, Minidoka County
P.O. Box 368
Rupert, Idaho 83350

(b) The Appellant is exempt from paying the estimated fee for preparation of the clerk's record because Appellant is an officer of the State of Idaho acting in his official capacity, and Section 31-3212(2), Idaho Code, provides that county officers shall not charge any fee for any services rendered in any action or proceeding in which any state officer in his official capacity is a party.

(c) The Appellant is exempt from paying the appellate filing fee because Section 67-2301, Idaho Code, provides that no filing fee shall be charged for services rendered to any state officer in the performance of his official duties.

(d) Service has been made upon all parties required to be served pursuant to Rule 20, I.A.R.

Respectfully submitted this 23rd day of December, 2009.

MOORE SMITH BUXTON & TURCKE, CHTD.



for Paul J. Fitzer

Attorneys for County Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Third Amended Notice of Appeal was this 23rd day of December, 2009 served upon the following individuals and in the corresponding manner:

Christopher Simms
The Pine Street Station Building
400 S. Main Street, Suite 303
P.O. Box 1861
Hailey, ID 83333

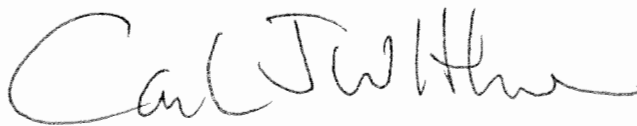
☒ U.S. Mail
☐ Hand Delivery
☐ Facsimile

Phillip J. Collaer
ANDERSON JULIAN & HULL, LLP
P.O. Box 7426
Boise, ID 83707

☒ U.S. Mail
☐ Hand Delivery
☐ Facsimile

Hon. Robert Elgee
Blaine County Courthouse (resident
chambers)
202 S. Second Ave. S, Suite 110
Hailey, ID 83333

☒ U.S. Mail
☐ Hand Delivery
☐ Facsimile



 Paul J. Fitzer

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR CAMAS COUNTY

GEORGE MARTIN and MARTIN CUSTOM
HOMES, LLC,

Plaintiff-Respondents,

V.

ED SMITH AND CAMAS COUNTY, IDAHO, by
And through the duly elected Board of
Commissioners in their official capacity,
KEN BACKSTROM, BILL DAVIS, and RON
CHAPMAN,

Defendants-Appellants.

Court No. CV-2007-24

Third Amended

**CLERK'S CERTIFICATE OF
OF APPEAL**

FILED
12-31-09
HR 11:00 AM
ROLLIE DENNIS
CLERK OF THE DISTRICT COURT
Boise, Idaho

Appeal from: Fifth Judicial District, Camas County. Honorable Robert Elgee presiding.

Case number from court: CV 2007-24

Order or Judgment appealed from: December 3, Findings of Fact, Conclusion of Law, and Order
Following Trial, May 29, 2009, Order Reissuing Findings of Facts, Conclusions of Law, and
Order Following Trial and Memorandum Decision on Attorneys Fees and Costs on the 8th day of
October, and **Judgment, Filed November 17, 2009**

Attorney for Appellant: Paul Fitzer

Attorney for Respondent: Christopher P. Simms

Appealed by: Defendants

Appealed against: Plaintiffs

Third Amended Notice of Appeal Filed December 23, 2009

Notice of Cross-Appeal filed:

Amended Notice of Cross-Appeal filed:

Appellate fee paid: None-Exempt

Respondent's Request for additional clerk's record filed:

Respondent's Request for additional reporter's transcript filed:

Was District Court Reporter's Transcript requested? Yes

Third Amended Clerks Certificate of Appeal - 1

pg 789

Name of Reporter: Susan Israel, 201 2nd Ave S, Ste 106, Hailey, ID 83333
Maureen Newton, P.O. Box 368, Rupert, ID 83350

Request for additional reporter's transcript:

Dated: December 31, 2009

F.R. BENNETT
Clerk of the District Court

By: Korei Blomett
Deputy Clerk

Third Amended Clerks Certificate of Appeal - 2 pg 790

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR CAMAS COUNTY

GEORGE MARTIN and MARTIN CUSTOM)	
HOMES, LLC,)	
	)	SUPREME COURT #
Plaintiffs-Respondents,)	
V.	)	CERTIFICATE OF EXHIBITS
)	
ED SMITH and CAMAS COUNTY, IDAHO, by)	
And through the duly elected Board of)	
Commissioners in their official capacity,)	
KEN BACKSTROM, BILL DAVIS, and RON)	
CHAPMAN,)	
)	
Defendants-Respondents,)	

I, KORRI BLODGETT, Deputy Clerk of the District Court of the Fifth Judicial District of the State of Idaho in and for the county of Camas, do hereby certify:

That the attached list of exhibits is a true and accurate copy of the exhibits being forwarded to the Supreme Court on Appeal. However the following exhibits will be retained at the district Court Clerk's Office and will be made available upon request:

- 1. Plaintiff's exhibit #A**-Published Notice of P & Z Commission Hearing on Zoning Ordinance & Comp Plan
- 2. Plaintiff's exhibit #B**-Published Notice of Board of County Commissioners Hearing on Zoning Ordinance & Comprehensive Plan.
- 3. Plaintiff's exhibit #C**-Finding of Facts & Conclusions of Law by Camas County Planning & Zoning Commission regarding Camas County Zoning Map.
- 4. Plaintiff's exhibit #D**-Findings of Camas County Planning & Zoning Commission Re: Zoning Ordinance.
- 5. Plaintiff's exhibit #E**-Findings of Camas County P&Z Commission Re: Comprehensive Plan.
- 6. Plaintiff's exhibit # F**-Findings of Camas County P&Z Commission Re: Comprehensive Plan.
- 7. Plaintiff's exhibit #G**-Publication on May 14th, of adoption on May 12, 2008 Zoning Ordinance #157 & Zoning Map Ordinance #158
- 8. Plaintiff's exhibit #H**-Decision on Requirements of a "Transcribable Verbatim Record"
- 9. Plaintiff's exhibit I**-Order Following Contempt Hearing & Order Expanding Preliminary Injunction.
- 10. Plaintiff's exhibit #J**-Decision on Conflict of Interests Issue for Purposes of a Preliminary Injunction.
- 11. Plaintiff's exhibit #K**- Minutes of P&Z Additional Meeting dated April 21, 2008.
- 12. Plaintiff's exhibit #L**-Minutes of May 12, 2008 Camas County Commissioners Meeting.
- 13. Plaintiff's exhibit #M**-Motion to dismiss.
- 14. Defendant's exhibit #1**-April w, 2008 legal Notice of Public Hearings for Camas County Zoning Ordinance & Comprehensive Plan & Comprehensive Plan Map & Zoning Map.
- 15. Defendant's exhibit #2** April 9, 2008 legal notice of Public Hearings.
- 16. Defendant's exhibit #3**-April 16, 2008 Legal notice of Public Hearing.
- 17. Defendant's exhibit #4**-Finding of Facts & Conclusions of Law of Camas County P&Z Commission Re camas County Zoning Map.
- 18. Defendant's exhibit #6**- Findings of Camas County P&Z Commission Re: Comprehensive Plan

- 19. Defendant's exhibit #7-** Findings of Camas County P&Z Commission Re: Comprehensive Plan Map.
- 20. Defendant's exhibit #8-** Camas County P & Z recommendation Form dated 4/22/08.
- 21. Defendant's exhibit #9-** April 23, 2008 legal Notice of Public Hearings for Camas County Zoning Ordinance & Comprehensive Plan & Comprehensive Plan Map & Zoning Map.
- 22. Defendant's exhibit #10-** April 30, 2008 legal Notice of Public Hearings for Camas County Zoning Ordinance & Comprehensive Plan & Comprehensive Plan Map & Zoning Map.
- 23. Defendant's exhibit #11-** May 7, 2008 legal Notice of Public Hearings for Camas County Zoning Ordinance & Comprehensive Plan & Comprehensive Plan Map & Zoning Map.
- 24. Defendant's exhibit #12-** Agenda for May 12, 2008 Board of County Commissioners meeting.
- 25. Defendant's exhibit #13-** Agenda for May 19, 2008 Board of County Commissioners meeting.
- 26. Defendant's exhibit #14-** Minutes of the May 12, 2008 Camas County Commissioners Meeting.
- 27. Defendant's exhibit #15-** Minutes of the May 19, 2008 Camas County Commissioners meeting.
- 28. Defendant's exhibit #16-** Publication on May 14th, of adoption on May 12, 2008 Zoning Ordinance #157 & Zoning Map Ordinance #158.
- 29. Defendant's exhibit #17-** Camas County Board of Commissioners Findings of Fact and Conclusion of Law Re: 2008 Zoning Map.

I FURTHER CERTIFY, that the following document will be submitted as an exhibit to the Record:

1. Affidavit of Dwight Butlin in Support of Defendants' Motion for Summary Judgment
2. Affidavit of Ken Backstrom in Support of Defendants' Motion for Summary Judgment

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court the 30 day of September, 2010.

Korri Blodgett
Clerk of the District Court

By Korri Blodgett

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR CAMAS COUNTY

GEORGE MARTIN and MARTIN CUSTOM)	
HOMES, LLC,)	
	)	SUPREME COURT # 36055-2009
Plaintiff-Respondents,)	
V.	)	CLERK'S CERTIFICATE
)	
ED SMITH AND CAMAS COUNTY, IDAHO, by)	
And through the duly elected Board of)	
Commissioners in their official capacity,)	
KEN BACKSTROM, BILL DAVIS, and RON)	
CHAPMAN,)	
)	
Defendants-Appellants.)	

I, Korri Blodgett, Deputy Clerk of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Camas, do hereby certify that the above and foregoing Record in the above-entitled cause was compiled and bound under my direction and is a true, full and correct Record of, the pleadings and documents under Rule 28 of the Idaho Appellate Rules.

I do further certify that all documents and exhibits offered or admitted in the above-entitled cause will be duly lodged with the Clerk of the Supreme Court along with the Court Reporter's Transcript and Clerk's Record as required by Rule 31 of the Idaho Appellate Rules.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Fairfield Idaho, this 30th day of September, 2011.

Korri Blodgett
Clerk of the District Court

By Korri Blodgett
Korri Blodgett
Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR CAMAS COUNTY

GEORGE MARTIN and MARTIN CUSTOM
HOMES, LLC,

Plaintiff-Respondents,

V.

ED SMITH AND CAMAS COUNTY, IDAHO, by
And through the duly elected Board of
Commissioners in their official capacity,
KEN BACKSTROM, BILL DAVIS, and RON
CHAPMAN,

Defendants-Appellants.

SUPREME COURT # 36055-2009

CERTIFICATE OF SERVICE

I, Bobbie Walton, Deputy Clerk of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Camas, do hereby certify that I have personally served or mailed, by United States mail, one copy of the Clerk's Record and the Court Reporter's Transcript, to each of the Attorneys of Record in this case as follows:

CHRISTOPHER SIMMS
P.O. Box 1861
Hailey, ID. 83333

Attorney for Respondents

PAUL FITZER
950 W. Bannock St., Suite 520
Boise, ID. 83702

Attorney for Appellants

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal
of the said Court this 30 day of September, 2011.

CLERK OF THE DISTRICT COURT

By: Bobbie Walton
Bobbie Walton, Deputy Clerk